





Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761117139733>



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 18

TUESDAY, APRIL 22, 1975

Twelfth Proceedings on Bill S-19, intituled:

“An Act to amend the Food and Drugs Act, the Narcotic Control Act
and the Criminal Code”

(Witnesses and Appendices: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker—(20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Senator Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, April 22, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2.00 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Fergusson, Godfrey, Laird, McGrand, McIlraith, Neiman and Quart. (9)

Present but not members of the Committee: The Honourable Senators Heath, McNamara and Sullivan.

In attendance: Mr. R. L. du Plessis, Legislation Section, Legal Services, Department of Justice, Legal Adviser to the Committee.

The Committee continued its examination of Bill S-19 intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

The following witnesses, representing the *Canadian Association of Chiefs of Police*, were heard by the Committee:

Chief J. F. Gregory, Victoria, B.C., President of the Association;

Mr. Bernard E. Poirier, Executive Director.

The Committee also heard Mr. G. Greg Brodsky, Chairman, Criminal Justice Section of the *Canadian Bar Association*.

On Motion of the Honourable Senator McIlraith it was *Resolved* to print the Brief of the Canadian Association of Chiefs of Police in this day's Proceedings. It is printed as Appendix "A".

On Motion of the Honourable Senator Laird it was *Resolved* to print the Brief of the Canadian Bar Association. It is printed as Appendix "B".

At 4.55 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, April 22, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 2.00 p.m. to give further consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, the first organization to appear this afternoon is the Canadian Association of Chiefs of Police, of which Chief J. F. Gregory, of Victoria, B.C., is the President. I now ask Chief Gregory to introduce his delegation. I believe he will also proceed with the presentation of the brief of the association.

Chief J. F. Gregory, President, Canadian Association of Chiefs of Police, Inc., Victoria, B.C.: Mr. Chairman, honourable senators, it is my pleasure today to introduce to you: the Executive Director of the Canadian Association of Chiefs of Police, Monsieur Bernard Poirier of Ottawa; the Chairman of the Law Amendments Committee of the Association, Deputy Chief of Police, T. E. Welsh; Inspector R. Dulude, of the Montreal Urban Community Police Department; Maitre G. Lafrance, the Legal Advisor to the Police Department of Montreal; Deputy Commissioner L. R. Gartner, of the Ontario Provincial Police; Chief of Police E. G. Wersch, of Nepean Township, who is Secretary-Treasurer of our Association; and Chief Robert F. Cook, of the Sarnia Police, Ontario. With us, as our adviser, is Mr. André McNicoll, of Ottawa, who has helped us in the preparation of our brief, drawing on his personal experience.

Honourable senators, I hope that you will take confidence in knowing that the policemen here today represent 190 man-years of police experience. I hope also that it will please you to learn that I am not an orator, but that I and my colleagues are policemen, each of whom has considerable field experience in all phases of law enforcement. Our experience has been drawn from service in law enforcement bodies from the Pacific to the Atlantic. We and the more than 50,000 peace officers in public service in Canada are those who first see the terrible ravages inflicted upon our people by the insidious effect of the drug phenomenon which has been infesting our nation.

The policeman is the person who sees the vicious criminals in action, their massacred victims with broken homes, the broken hearts and dreams of the grieving parents and the terrible cost in human lives caused by illicit drugs. The police see these tragedies in real life, not in the sterile and austere atmosphere of a court room or clinic and not as a cold figure in a list of statistics. The proponents of legalization of marihuana and the detractors of police resistance toward lessening of penalties for importing, trafficking and using marihuana claim that such an attitude is typical of the police and that the police take such a stand in order

to lessen their workload, or for sadistic reasons. This is sheer nonsense. We, the police, do not shirk our work, nor do we get pleasure in seeing our young people become involved in drugs and crime. We do see our ever-increasing crime rate and work load, which, in turn, means a greater threat to the citizen's right to freedom from crime and from fear of crime.

We have been trying for decades to convince the law makers that ever-increasing leniency towards soft drugs can only compound an already intolerable drug crime picture in Canada by suggesting in the proposed legislation that soft drug use, although undesirable and illegal, is but a minor offence and one which we could live with.

If I may be permitted to refer to statistics in British Columbia, with a population of 1,884,000, it has been authoritatively estimated that there are 10,000 heroin addicts, an increase of 455 per cent in five years. The monthly consumption cost of heroin in B.C. alone is \$20,160,000 or \$255.5 million a year. The number of cannabis offences in 1969 was 1,965, which rose to 8,409 in 1973. There can be no question that the use of marihuana is a serious problem. By all means seek out the cause of the problem by way of the sciences, but for the sake of the coming generation do not encourage the use of this insidious and dangerous drug by lessening the penalties.

If you will permit me, I shall briefly review our submission and would respectfully request that it be entered into your record in its entirety.

In summary, with regard to the apparent reasons why marihuana should be transferred from the Narcotic Control Act to the Food and Drugs Act, we hope to show the effects of the proposed legislation on law enforcement. We will introduce a case history and will submit our conclusions and recommendations on the theory that a person with a problem who does not have an answer is himself part of the problem.

On the first page we express our concern about the problem and our appreciation for this opportunity to present our views.

We feel that Bill S-19, on the face of it, would appear to the general public to condone the use of cannabis. We realize that this committee is faced with opposite views and perhaps statistics which appear contradictory.

On page 2 we are faced with the erroneous acceptance of the fact that if it is legal it is morally, socially and medically acceptable. We also make reference to new medical evidence on the deteriorating influence and danger of marihuana.

At the bottom of the page we indicate that in the light of new evidence which has come forward since the Le Dain Commission report, it is dangerous to prepare legislation on the basis of that report.

I will produce reports from Mr. Hoskin, former Director of the Narcotic Addiction Foundation of British Columbia, referring directly to that subject, which may and, I hope, will be of assistance to you. The Hoskin report is at the end of the table and is available for members of this committee.

At page 3, under the heading "Nature of Bill S-19:" we set out our understanding of the changes suggested.

At page 4 we refer to the fact that we feel that subsequent offences should include restricted and other drugs. At the bottom of page 4 we indicate that minimum penalties for trafficking should not be overlooked.

On the following page, we recommend that the penalty for trafficking and possession for the purposes of trafficking should be treated as identical offences. We also claim that the onus should be on the accused to show possession for his own use.

Senator Croll: The onus is on him now, is it not? What is the difference in what you say?

Chief Gregory: In the bill I believe it is not. Marihuana is now.

Senator Croll: The onus is on him now under the law, is it not?

Chief Gregory: Yes, sir, and we want to keep it that way.

Regarding marihuana for his own use, we feel the onus should be on him and that the minimum penalty for importing for other than that should be mandatory.

On page 6 reference is made to the relationship between alcohol and cannabis. It seems inevitable that an analogy be drawn between alcohol and cannabis. We agree that such comparison is inevitable, but we hasten to point out the terrible burden which alcohol has created in our society.

At page 7 we suggest that the reasons for the proposed change, in the first instance, are perhaps minor and simply a question of semantics; and, secondly, with the amendments, that the penalties under the Narcotic Control Act would appear to be too excessive for the nature of the substance.

The Honourable Mr. Lalonde stated that "There is no solid proof that the use of marihuana automatically leads to heroin". We contend that this is just not so. The majority of heroin users start with soft drugs, generally cannabis. We clearly understand that all persons who use soft drugs do not become hard drug addicts.

At page 8, insofar as Bill S-19 appears to condone, by the lessening of penalties, the use of cannabis, we submit that the spirit of the bill, should it become law, would open the door to greater drug problems. Also on page 8 we refer to the victimless crime. We feel that our submission puts the lie to victimless crime.

On page 9 of our brief we stress the need for further research before any consideration can be given to more lenient soft drug laws. We feel we are only seeing the tip of the iceberg. At the bottom of page 9 we refer to the effect on law enforcement. Unfortunately, when laws fail the police are often blamed.

I might refer at this point to a statement made by the Honourable Mr. Turner in London, Ontario, in 1972, when he was Minister of Justice, in which he said, "We need credible laws which will be enforced in a credible manner." As police officers, that is what we are attempting to do.

On page 10 we refer to juvenile delinquency and the extensive involvement of juveniles in drugs to the extent of trafficking. We also refer to the varying strengths and forms of cannabis.

To repeat, we feel that any leniency in present legislation, even though this legislation, intrinsically, may be acceptable and operable, will have the side effect of conditioning youth to recognize such practices as acceptable, particularly in the light of relatively harmless sentences or legal sanctions.

At the bottom of page 11 we refer to adult users and people in more affluent brackets. That particular portion of our brief is self-explanatory.

On page 12 we deal with the absence of deterrents. We feel that the absence of deterrents will increase trafficking due to increased use encouraged by lenient legislation. We feel that trafficking will move from the amateur to the professional. It is our opinion that clause 50(2)(b)(ii), which deals with possession for one's own use, will provide an alibi for non-users to become involved in trafficking. In this connection, I might refer you to the duty-free shops at border crossings where you will see non-smokers and non-drinkers buying liquor and tobacco for distribution. This type of thing will be permitted under the proposed legislation.

That brings us to the case history prepared by Mr. McNicoll. In submitting this brief we have tried to bring before you, on the basis of practical experience, the problems we see facing society if this bill is proceeded with in its present form. To this point, our experience as police officers has been the basis of the brief insofar as generalities are concerned. However, we not only rely on first-hand experience of police personnel, but also on that of special advisers through consultation. The Law Amendments Committee of our association would now like to introduce to you Mr. André McNicoll, along with a condensed history of his experiences. You have the case history before you. It is not our intention for Mr. McNicoll to read all of it.

Mr. McNicoll was born in Ottawa in 1942 into a family of two brothers and one sister. He attended local high schools and Carleton University, graduating with a BA in Sociology and Political Science in 1966. He then went to Brockville and worked with the Ontario Department of Health, Mental Hospitals Branch, in its rehabilitation hospital. He attended Sir George Williams University in Montreal to further his education, and in 1972 went to the University of London, England, for a Masters degree in Medical Sociology. I think you will agree that this young man had a bright and promising future.

If you wish, Mr. Chairman, I will have Mr. McNicoll tell you of his experiences; or, if you prefer, members of the committee may question him on the case history that has been submitted.

Senator Laird: Perhaps I might make a proposal, Mr. Chairman. First of all, I assume all members of the committee have read this case history. Secondly, we have heard witnesses with somewhat similar experiences. Speaking only for myself, I am much more interested in having Chief Gregory finish his submission. The time of the committee is limited.

Chief Gregory: I know, senator—and very valuable, too.

Senator Croll: How long has Mr. McNicoll been with you?

Chief Gregory: Perhaps I might ask my colleague to give you the background.

Senator Croll: I am only interested in how long he has been with you.

Chief Gregory: Approximately a month.

Senator Croll: And does he have a future with your association? You were speaking of a young man who had a future.

Chief Gregory: He is not employed by us, senator.

Senator Croll: I assumed he was employed by you when you said he had been with you for about a month.

Chief Gregory: No, senator.

Senator Croll: He is not employed by you, then?

Chief Gregory: No. In his capacity as Technical Adviser to the Law Amendments Committee, we drew upon his experiences to prepare the case history as laid before you.

Senator Laird: And we have read it.

Senator Croll: I agree with Senator Laird. We should hear the evidence from you.

Senator Neiman: We would prefer to hear your evidence, Chief Gregory.

Senator Croll: As a matter of fact, I think I heard this young man on television discussing this very matter, but I may be mistaken.

Chief Gregory: He has appeared on television and he has been interviewed by the local press, I believe.

Senator Croll: I thought I heard him say in a television interview that the Senate was going to legalize marihuana, or was inclined to do so, or was on the verge of legalizing it. I did not think that was a very responsible statement to make in light of the evidence before the committee. It may not have been this young man; I do not know.

Chief Gregory: He is available for questioning on that point, in any event, senator.

Senator Croll: I will leave it at that for the moment. If I am wrong, he can speak to it.

Senator Sullivan: He is here now and can answer your question.

Senator Croll: Well, he will have an opportunity.

Chief Gregory: Having read the case history, we feel that such personal experience and evidence is the basis of our position against the so-called "softest" of drugs. We feel this case history is not unique. As was mentioned by Senator Laird, the committee has listened to many in the same predicament.

How overwhelming must the evidence be in order to refute the presentations and the convictions of those who have not suffered the practical experience, but who base their conclusions on the exception and theory? On page 23 we give you authorities for our stance and attitude.

We conclude that the lack of minimum penalties in the proposed legislation is a serious omission and affects seriously any effective deterrence and the problem of the execution of warrants issued in default of payments of

fines. We therefore make the strongest recommendation that minimum penalties be provided in every case, other than for a first offence for mere and simple possession of marihuana.

It is the opinion of the association that the bill, by failing to distinguish between the different forms of cannabis, contributes to the confusion that surrounds this drug.

In conclusion, there is sufficient new evidence concerning cannabis which indicates that there are dangers in its use that were heretofore unknown but which, as a result of increasing research, are now beginning to surface. To create too lenient a law and not seriously discourage the use of these drugs at this time will prevent our society from receiving the benefits of such research.

We believe that with the dangers implied by medical authorities who have supported the opinion that cannabis is a dangerous drug, it is important to convey to society, through a reasonably strict law, that the use of drugs is something to be avoided. May we therefore respectfully suggest that this committee, by maintaining a more severe attitude towards the use of cannabis, can provide legislation which can give society the guidance that it needs in the matter of this dangerous drug.

We submit this brief knowing that the legislation that might result from the deliberations of this committee could in turn result in Canada becoming either a drug-oriented society or one that is relatively free from drug abuse.

We once again reiterate our appreciation for the opportunity of presenting our views collectively and individually, and trust that the comments made will commend themselves to your attention.

The Chairman: Thank you, Chief Gregory.

Senator Laird: Chief Gregory, to paraphrase what John Turner said, which you quoted, what we are searching for here is a credible law, capable of being credibly enforced. That, of course, is giving us a great deal of trouble, because some of us who went through the examination of the parole system realize that incarceration in a prison is pretty disastrous for a young person. Therefore, the principal change, of course, made in the bill is to lessen the penalty for mere possession, having in mind the young teenager found with a "joint" or two.

In the brief, in effect you suggest only one alternative, as I see it, and that is to maintain severe penalties. Might I suggest that other evidence has been given which may have credibility? I would like your comments. For example, what would you think if, instead of punishment, either by way of fine or incarceration, there were some sort of compulsory education directed for the offender?

Chief Gregory: I think we are talking about a minimum sentence there. This is what we are after, the ability to impose minimum sentences, not lessen them, not let them off with suspended sentences or whatever. We have no objection to what you suggest for a first offence for simple possession. It is the subsequent ones, where they do not happen to learn by their previous experience. That is our position. I see your point on education.

Senator Laird: That is good, because it does seem that if you apply some of the principles that are now applied in connection with convictions for automobile offences, where the convicted party is compelled to take a compulsory course, it brings favourable results. That is why I suggest that as a possible alternative.

Another thing I would like to ask you about has come up many times in the course of evidence. I think you actually make an observation that opens this up, on page 2 of your brief. It would seem that really you are dealing here with a personality problem, in that a person who has, let us say, psychotic tendencies is more likely to resort to a drug like marihuana. Would you agree with that?

Chief Gregory: No, sir. We feel that it is too general an epidemic, and that if that were so we have a lot more psychotic people than we care to admit. I believe that a lot of people are hiding behind the psychotic syndrome or the psychotic excuse; they are people who are opting out of our society, and they are opting out by the use of drugs.

Senator Laird: So you do not go along with the theory that has been propounded by witnesses, that because of the personality of the user being unstable in some fashion or other he is more likely to resort to drugs of any kind—alcohol, marihuana, heroin, cocaine?

Chief Gregory: No, I do not subscribe to that. I feel that a murderer can still hide behind the insanity rule. You and I might feel that to commit murder you have to be crazy, but in real life that is not the case. We are all different, but, as a psychiatrist will tell you, I do not think there is such a thing as a normal person.

Senator Sullivan: Even including psychiatrists?

Senator Laird: If, however, it is a personality problem, then perhaps the approach should be from some other direction if we want to minimize the use of cannabis.

Chief Gregory: As I mentioned in my summary, I feel that we should search out the problem for these disturbed people. These are the responsibilities of our social scientists. By all means search out the cause and help people before they become hooked on drugs, and marihuana is the first step of that spiral that circles down into the depths.

Senator Laird: Frankly, what is worrying me—at least, speaking only for myself—is that the imposition of harsh penalties may not be the right solution to this problem. Let us take the case of alcohol and the noble experiment with prohibition, which was a complete failure.

Chief Gregory: May I then say, take these people off the street, because they themselves have an evangelical desire to spread the good word of drugs to their peers; they drag others down with them. I feel that these people who are hooked on it must be taken out of society. With a first offence, let us give them a suspended sentence if necessary; let us put them into an educational area where they can be taught that future involvement in drugs will lead them to the inevitable end of destruction, self-destruction. But for continued use you have to take them out of society; having proven that education is not the answer, you must then take them out of society and enforce education, have the psychiatrists work on them, have the social scientists work on these people to find out what their problem is, what their hang-up is, why they do it. Perhaps then we can effect some kind of rehabilitation. But again, not having done that, what can you do with these poor lost souls but take them out of our society where they do not affect others? I am sure your witnesses have told you many, many times before that marihuana use is down to the eight- and nine-year olds. This is intolerable in our society, I think, as a policeman. I am most upset about it.

Senator Laird: That brings me to the final question. On the matter of trafficking, should we not differentiate between what we might call the amateur trafficker—somebody, say, in the schools among the students who peddles to his peers in order to get money to buy more—and the commercial trafficker who is undoubtedly a member of organized crime? Should there not be some differentiation there in the penalty?

Chief Gregory: Sir, I do not know whether you are baiting me on that question. I think you know the answer. Trafficking is trafficking—that is, supplying illicit drugs to people. You and I want to stop this. Why create a loophole for a person to plead, "I was only doing it because I was hooked on it myself. I am only doing it as an amateur, so that I can supply my own drug habit." I think that we are whistling in the dark.

Senator Laird: I have just one final observation. If my memory serves me correctly, I put somewhat the same question to the RCMP and they acknowledged that there could be a differentiation in the nature of the crime, having in mind who committed it. But they said that, from the standpoint of police work, it was extremely difficult to locate, arrest and convict the commercial trafficker. Now, in your experience, is that so?

Chief Gregory: In my experience, it is extremely difficult to convict anybody, for any crime.

Senator Croll: Unless they are guilty, of course.

Chief Gregory: There is a line there. To address myself to the question, the alibis provided are unacceptable, I think. Either trafficking is going to be illegal or it is going to be permissible. As to trafficking for your own use or for a small amount, it is always a small amount we catch them with. They are wise to our laws and they will use this as a loophole by being in possession of only very small amounts, and the major cache is not more than a block away or a room away.

Senator Laird: So you really consider all traffickers to be in the same category?

Chief Gregory: I do indeed, sir, with varying degrees of expertise.

The Chairman: Chief Gregory, we have been told about pot parties,—a group of students sitting around a table at night and smoking marihuana, and one of them handing out a couple of joints to his friends. Would you consider him a trafficker?

Chief Gregory: Yes, he is providing the drug to a person who otherwise would not have had an opportunity of having it.

The Chairman: So you would treat him as you would treat a commercial trafficker?

Chief Gregory: Yes, sir, within the confines of the act, that permits a humanistic penalty to be imposed.

Senator Croll: Did I understand you to say that no one was being paid for it?

The Chairman: Yes, that is right.

Senator Croll: Was that clear to the Chief?

Chief Gregory: That is right, yes.

Senator Croll: Do you carry it further? If I offer it to somebody in my home, to have a smoke or a drag on it, is that the same answer?

Chief Gregory: That is splitting hairs—I am sorry, sir—and in my experience this does not lead to prosecution. I think our system of justice is such, by means of the latitude permitted to our policemen and our Crown counsel and our judges, that such would not be the case. We would be after the person who supplied that marihuana to the party.

Senator McIlraith: Mr. Chairman, there is one point I should like to clear up first with the committee. Is it proposed to incorporate this brief supplied to us in the proceedings and take it as read?

The Chairman: Yes. Chief Gregory suggested that. It would need the approval of the committee.

Senator McIlraith: I would so move.

The Chairman: I would make one suggestion, Senator McIlraith. I note that attached to the brief is an article by Dr. Harvey Powelson. We have a great number of publications that have been submitted to us which have not been included in the record but which have been distributed to the members. I would suggest that we reproduce the brief proper, excluding the appendix.

Senator McIlraith: And table the appendix with the other publications we have?

The Chairman: Yes.

Senator McIlraith: That is agreeable.

The Chairman: Is that approved?

Hon. Senators: Carried.

(For text of brief, see Appendix "A")

Mr. Bernard E. Poirier, Executive Director, Canadian Association of Chiefs of Police: Mr. Chairman, could I say at this juncture that that article, as it may be obvious to a good number of honourable senators, Appendix A, was taken directly from *Readers' Digest*, the April issue, and that should be identified.

Senator Laird: We have all read it.

Senator Croll: It is not the best authority this day in Parliament.

Senator McIlraith: I would like to clear up another point. At page 12 of your brief, in a paragraph near the bottom of the page, you say:

We believe that such gangs will continue to operate even more actively and will be looking for ways to take advantage of section 50(2)(b)(ii) of the proposed legislation in an effort to defeat the purpose of this legislation and create an even more lucrative business both among adults and the juvenile sub-culture with a minimum of risk to all.

Chief Gregory: would you just take a moment and look at that reference and the clause of the bill and amplify that paragraph as to exactly what you mean by it?

Chief Gregory: It is the exception that we take exception to. It reads:

except that subparagraph (b)(ii) does not apply where that person, after having been found guilty of the

offence, establishes that he imported or exported the cannabis for his own consumption only.

This refers again, let us say, to eight or ten children, or even adults for that matter, with a small amount, two or three ounces of cannabis. They are carriers for one person. This is the alibi that we referred to; it provides an alibi.

Senator McIlraith: You are referring, of course, to the offence of importing into Canada or exporting from Canada any cannabis?

Chief Gregory: Yes, sir.

Senator McIlraith: And if I understand your argument correctly, you are saying that this exception from the charge of importing cannabis permits a person to bring it in legally without any danger of being prosecuted and permits an alibi for importers. Is that your idea?

Chief Gregory: It provides an alibi and gives him a reduced sentence. It is less than three years. The "not less than three years" will not apply to him—when, in fact, he is bringing it in as part of a conspiracy.

Senator McIlraith: So your fear is, following the practice used in alcohol in duty-free ports, that with cannabis eight or ten people coming in could bring in a sizeable amount?

Chief Gregory: They could indeed, and each one of them, or one of them being caught with a small amount, could say, it speaks for itself, "It is for my own use."

Senator McIlraith: And therefore escape a penalty?

Chief Gregory: Yes.

Senator McIlraith: Then your recommendation is that the latter part of section (2) be deleted?

Chief Gregory: Yes, that is right; to take away that alibi.

Senator McIlraith: Thank you.

Senator Godfrey: We had evidence from the Mounted Police that only about one out of four people caught in possession of cannabis was actually charged. Would you like to comment on that?

Chief Gregory: Yes, I think I made reference to that statement when I was answering your honourable colleague. The discretion given to the police—and thank heaven we have that discretion—permits the one-joint young man who has no record to get off without being prosecuted. He can simply be taken home to his parents who, hopefully, will discipline him. I think that is what the RCMP were mentioning.

Senator Godfrey: We have also heard evidence to the effect that if people are caught importing marihuana in very small quantities, they are charged with simple possession rather than importation. Has that been your experience?

Chief Gregory: I cannot recall that happening, but it may have at the insistence of Crown counsel, again to provide the benefit not of any doubt but of a misguided effort to import the drugs. Because of the minimal penalties this has perhaps been the case.

Senator Godfrey: Seven years!

Chief Gregory: Yes, and confiscation of the vehicle.

Senator Godfrey: Would you not agree that seven years is a rather harsh sentence for someone caught with one joint in his pocket at an airport?

Chief Gregory: I agree that it would be, but that would not be importing for purposes of trafficking.

Senator Godfrey: But under the present law?

Chief Gregory: I agree it would be.

Senator Godfrey: The question of second offences has rather worried me. Why should there be a harsher sentence for a second offence, which might simply mean that the man was unlucky enough to be caught twice? There has been some suggestion that the police want the higher penalty for second offences because that is an indirect means of getting at traffickers when you cannot prove they are traffickers. Would you comment on that, please?

Chief Gregory: Yes, sir. I find that hard to believe. In my experience it does not happen. The reasoning behind the second offence penalties seems rather apparent to me, a simple man. He did not learn the first time; therefore, you hit him harder the second time.

As I have indicated, our feeling is that the first time, yes, by all means, help the individual as much as possible. If he commits a second offence, it is obvious he did not benefit from the first experience so then you incarcerate him. You take him out of the society he is infecting and apply your social sciences to get to the root of the problem. We want to nip this as quickly and as decisively as we possibly can.

Senator Godfrey: Do you find that putting these people in jail for simple possession does them any good?

Chief Gregory: Evidently, if they have been caught a second time, leaving them out on the street has not done any good. Our feeling is that they are the rotten apple in the barrel and we want to remove it. There is something peculiar about the drug marihuana which makes people who take it become evangelists. They want to get a crowd around them and turn them on. Whether the marihuana user gets his kicks out of this, or what, we do not know, but it is a known fact that he goes out and actively recruits other users.

The Chairman: Are you talking now about the traffickers or the case of the person who is caught for the second time in simple possession?

Chief Gregory: I am talking about simple possession, Mr. Chairman, inasmuch as he has not learned his lesson the first time. Hopefully, he had some instruction and education the first time, but if he has been turned off somewhere along the way and is anti-social, then he has to be confined to an institution where our psychiatrists or psychologists and social workers can try to re-educate him or rehabilitate him. This can be done more easily if he is confined and must accept the instruction. There would seem to be no point in relying on his voluntary co-operation, since he has been convicted a second time or apprehended a second time. Obviously, he has not been rehabilitated since the first occasion.

Senator Godfrey: You made the statement that marihuana is the first step towards harder drugs. We have heard evidence here that alcohol is actually the first step. We have been told that, practically, most people who smoke marihuana first start off on alcohol and that alcohol is the first step, not marihuana.

Chief Gregory: I have no experience or information along that line, senator. What we are talking about here, really, is our juveniles, and I do not think a juvenile is old enough to take alcohol as the first step along the way. That comes as a bit of a surprise to me. In philosophizing about it, I wonder whether he becomes an alcoholic first and then goes on to marihuana. I do not know. I hardly think so, though.

Senator Croll: Chief, when you were answering Senator Godfrey I think you used the words "take him out of society."

Chief Gregory: Right, sir.

Senator Croll: Exactly what did you mean by those words? Senator Godfrey asked you if you meant "sent them to jail." That did not seem to be the answer. What do you mean by "take him out of society"?

Chief Gregory: Take him, as the rotten apple, out of the barrel; institutionalize him; work on him to rehabilitate him, to make him accept his responsibilities; make him a worthwhile member of our society once again.

Senator Croll: How do you picture that being done?

Chief Gregory: Well, I hear a lot about the successes of our social scientists. Perhaps they could answer that.

Senator Croll: But, Chief Gregory, you are there and your organization is responsible and you are a responsible person. Surely you must have an answer. You see, you are the second person from British Columbia to present that idea without defining it. I remember the other one all too well. I asked him the very same questions. I asked him what kind of concentration camp he was thinking about, and at that moment he kind of ducked. Now, what are you thinking about?

Chief Gregory: I have no intention of ducking your questions. It is not a concentration camp syndrome that I have in mind, and yet it must be confinement because what I am talking about is second offences.

Senator Croll: Yes, I know.

Chief Gregory: If after the first offence he has not learned by leniency—or by any kind of educational program imposed upon him by the court, such as attendance at a clinic once or twice a week—but, on the contrary, has committed exactly the same kind of crime again, we must then take that man and immerse him in rehabilitative efforts. By that I mean education. It is a generalization, I realize. Perhaps it is not answering your question, but it is the best I can do. I say that he must be shown the danger that he poses to himself, to society and to our way of life.

Senator Croll: Do you picture a special rehabilitation effort on behalf of these people who need it?

Chief Gregory: Yes, sir.

Senator Croll: Separate and apart from anything else, as I gather?

Chief Gregory: Yes, sir; or it can be worked in conjunction with what we have today as a wing or an adjunct to it.

Senator Croll: Do we have any such places now?

Chief Gregory: I could not name any. We have them for hard drug users, but I do not think we have them for young offenders.

Senator Croll: Well, drug users.

Chief Gregory: Drug users, yes. I think we have.

Senator Croll: We have a couple of them, do we not, in Canada? One in your own province, I believe.

Chief Gregory: We have one in my own province, yes.

Senator Croll: I think we have one other, do we not?

Chief Gregory: I am not sure about that, but with hard drug users is not the place to put soft drug users.

Senator Croll: Well, that was the question I was asking you. I want you to draw a distinction between hard and soft. I can understand the confinement—jail, or otherwise—for the hard drug users, or whatever has to be done; but I was thinking of the soft drug problem, and the young and such people, and I thought you were talking about some special sort of confinement for them.

Chief Gregory: Oh, no. No. Wherever there is life, there is hope, senator, and in every bad person there is some good, and I think in an area like that, or in an institution like that, we should take these subsequent offenders and search for that good and develop it, and thereby rehabilitate them and make them useful members of our society, not people who are going to be heavy on our hands, or who would always be like leeches on our society.

Senator Croll: We understand that. Let me just get back to something else. We have a particular problem out on the west coast. It is a special problem, which has been in existence for how long? How many years has it been special in that sense?

Chief Gregory: Since 1901.

Senator Croll: That is a long time. We were told, I think, that there was a comparable problem in the United States, in New York and San Francisco. Perhaps it exists elsewhere as well; I do not know. They are the kind of cities, however, that do have problems similar to the one you have on the west coast. How old is our act, Chief?

Chief Gregory: The Narcotic Control Act?

Senator Croll: Yes.

Chief Gregory: It was amended, I believe, in 1948, but it was in 1901, I think, that William Lyon Mackenzie King, as Deputy Minister of Labour, came out to the west coast and found that the Chinese were legally able to import, traffic in, and use opium.

Senator Croll: And he put an end to it, did he?

Chief Gregory: He legislated against it.

Senator Croll: Yes. He did that for liquor, too, if you remember, some years later. I remember that, though I do not remember the first piece of legislation. Well, let us get down to this for a moment. We have had the act since 1901. We amended it in 1948. I remember an investigation during my early years in Parliament. Do you recall it? It was out on the west coast.

Chief Gregory: Your early days in Parliament?

Senator Croll: From 1945 on. Was it in 1948, do you think, or up to 1948?

Chief Gregory: I think there was an amendment in 1948. They changed its name. It was the old N. D. Act, and it was changed to the NCA.

Senator Croll: Yes. And we have had this act, have we not, since 1948, approximately?

Chief Gregory: Right, sir.

Senator Croll: We have a police force in Vancouver, a police force in Victoria, and a police force generally, namely, the RCMP. I am one of those who believe in a good police force. I think the RCMP is good, and I believe yours is a good force too.

Chief Gregory: I am glad to hear it, senator. The RCMP is my old alma mater. I spent many good years with them.

Senator Croll: Well, I have known them for a long time. However, the problem has worsened.

Chief Gregory: It has, indeed.

Senator Croll: Some of us here in Parliament seem to think that perhaps it is the penalty that is the trouble; but could it be the police?

Chief Gregory: The police are enforcing the law, as the legislators make it. They are stretched very, very thin. Surely we do not want a police state, with a policeman on every corner? I know I do not want that. I do not think you want it. In 1946 the estimated drug population of Vancouver was 4,000, but the figure gradually decreased to about 2,300 in the mid-1950s.

Senator Croll: Do you mind pausing there for a moment, Chief? To what do you attribute that? Having studied this problem, it must have occurred to you that something happened there. What did happen?

Chief Gregory: I do not know. Affluence, maybe.

Senator Croll: All right. You do not know. Let us go on, then.

Chief Gregory: It decreased to about 2,300 in the mid-1950s. Since that time, however, heroin addiction has increased until today there are an estimated 10,000 addicts in British Columbia.

Senator Croll: We are on hard drugs now.

Chief Gregory: Yes.

Senator Croll: Can we stay on soft drugs for a minute? We can always get back to the hard drugs.

Now, the falling off was in both soft and hard drugs. The figure you gave me was from 5,000 to 2,600?

Chief Gregory: That falling off is just with regard to hard drugs.

Senator Croll: Now the history of soft drug figures.

Chief Gregory: Cannabis offences in 1969 in the province of British Columbia—

Senator Croll: Can we go to a little before that? Or do you not have the figures? It is all right if you do not have them.

Chief Gregory: I understand they were presented, federal-wise, by the RCMP in their submission.

Senator Croll: Yes, but I cannot keep those figures in my head.

Chief Gregory: I think Chief Welsh has them.

Senator Croll: Go ahead with 1969.

Chief Gregory: Cannabis offences in 1969 amounted to 1,965, but in four years rose to 8,409.

Senator Croll: Well, in 1969, 1970, 1971, how did they grow? I am interested in just the rough figures, if you have them, over the years.

Chief Gregory: Yes. In 1969, 1,965; 1970, 2,924.

Senator Neiman: Are those convictions you are talking about?

Chief Gregory: Yes.

Senator Neiman: Cannabis only?

Chief Gregory: No. These are actual offences known to the police, and our clearance rates follow. We have them available.

Senator Croll: What is that?

Chief Gregory: Clearance rates—cleared by charge.

Senator Croll: Yes. So we have 2,924. In 1971?

Chief Gregory: The year 1971 is 3,532. In 1972, 4,550, and in 1973, 8,409.

Senator Croll: All right. That is with regard to soft drugs?

Chief Gregory: Well, that is in marihuana only, sir. We have controlled drugs and LDS on top of that.

Senator Croll: Just in the same years, have you got the figures for hard drugs—just roughly? I have a question I am trying to build the foundation for you.

Chief Gregory: I have the heroin addiction population.

Senator Croll: That will help.

Chief Gregory: This is just for three years, 1969 to 1971. They are totals. In 1969, 1,874; 1970, 2,467; 1971, 3,490.

Senator Croll: Yes. Well, there does not seem to be much difference between the soft and the hard.

Chief Gregory: They are escalating all the way up.

Senator Croll: Yes, and there has been no drop in the soft drug figures at all.

Chief Gregory: No, sir.

Senator Croll: Among the young, generally.

Chief Gregory: As a matter of fact, our experience has been that there has been a drop in age of those using them.

Senator Croll: Yes. "Among the young" is what I said.

Chief Gregory: Among the young, right down into your schools.

Senator Croll: Yes. I have heard that statement made. It is a little hard to understand, and a little hard to believe.

Chief Gregory: Please believe us, senator; it is true.

Senator Sullivan: That has been proved right in Toronto, Senator Croll.

Senator Croll: Well, I do not know what is proved.

Senator Sullivan: Kalant brought that out.

Senator Croll: Yes, I think he said that.

Chief Gregory: I believe a school teacher was convicted of supplying it to his students.

Senator Croll: Well, one school teacher, one bad apple?

Chief Gregory: Would you believe that a bad apple could be the tip of the iceberg, sir?

Senator Croll: Well, it is hard for me to believe that he even did it, but he did.

Chief Gregory: It was might hard for the judge, too, but by golly, he did it.

Senator Croll: Well, those things happen. But really, there is no consistency about it. What I am trying to find out here from the soft drug figures is this. The figures show that for soft drugs it goes from 3,000 to 8,000 in about four years, and from about 2,000 to 4,000 with regard to hard drugs.

Chief Gregory: Those are the ones we are catching.

Senator Croll: I know you cannot catch them all, and nobody is suggesting that you can, but it would seem at the moment that soft drugs are a type of what one might call a recreational drug, in a sense.

Chief Gregory: It is a dangerous, insidious drug, and that is borne out by the authorities I have quoted to you.

Senator Croll: Well, I can get you some authorities too—many of them, in fact—but that does not solve the problem. It does not alter the fact that it is used to some extent as a recreational drug. I have seen it smoked, and the people doing it seem to have fun in doing it. I cannot say how serious it can get, but I have no doubt it can get serious. But my question is simply this: How is it that in your area it has been able to reach those proportions, which are not true for the rest of the country? I say that because it seems to me that the proportions on the coast are higher than those for the rest of the country, so what is there that would attract those youngsters to that extent?

Chief Gregory: The good climate of British Columbia—and in saying that I am not being facetious.

Senator Croll: Well, I must say I was there once for a week when it did not rain!

Chief Gregory: I commend for your reading the initial report on organized crime in British Columbia, as it refers to hard drugs. It is a shocking—and I repeat that word—shocking indictment of our society today.

The Chairman: But I think Senator Croll was more concerned with the question of soft drugs.

Senator Croll: Yes. The hard drugs may be found more widely in the rest of the country, but nevertheless the other figures you have quoted are shocking insofar as they relate to the youngsters, and surprising in that the proportions do not apply to the rest of the country. After all, the people in British Columbia are no different from the people in the rest of the country; you have the same mix.

Chief Gregory: Senator, I do not have the explanation for it, and I do not claim that it is better policing, by any means. It seems to be more prevalent, I agree, but at the same time I think that my colleague, Chief Wersch, who has only recently established a one-man coalition drug squad with another force, finds that the results of two months of study of this problem have really shaken him. Whereas he was somewhat complacent about the soft drug situation in his own area of Nepean, he has been shaken to find that there are drugs, and a considerable amount of drugs, in his own municipality.

Senator Croll: But because of the drug problem out on the west coast you have had the very best that the RCMP could provide you with and the very best that Vancouver and the province could provide you with in the way of police, and you have had every opportunity to study these problems to try to come up with some answers—if there are any answers. Nevertheless we are here today just as we were here in 1948, without being any further ahead and without having any answers. Where are all the answers, if there are any?

Chief Gregory: I would like to know too, senator. Nowadays it is not just a question of narcotics; it is a question of every crime, right from juvenile delinquency and sexual crimes to bank robberies, frauds, white collar frauds and all the rest of it. They are skyrocketing. It is our moral turpitude. I have no wish to philosophize, because I am not a philosopher, nor am I a psychologist, but what is happening to our world today is what we are experiencing here.

The Chairman: I think we are getting into a much broader subject now.

Senator Sullivan: I think we are now talking about the permissive society.

The Chairman: I hope you are not going into that, senator.

Senator Sullivan: Well, I am just throwing it to the left a little.

I would like to clarify just one point. When I spoke on this subject I used as my first phrase that "there is no such thing as simple possession." Now today we have heard Senator Laird use the words "mere possession," Senator Godfrey use the words "simple possession," and the chief use the words "simple possession." Also the former Solicitor General of Canada, who was here a couple of weeks ago, happened to make the same remarks that I did. I wonder if somebody could elucidate that particular point.

The Chairman: Well, senator, the law refers to "possession," of course—it does not talk of "simple possession."

Chief Gregory: I think we use this terminology to differentiate between "simple possession," if I may be excused for using the expression, and "possession for the purpose of trafficking." That is perhaps oversimplifying it a little.

Senator Sullivan: I realize that, but I am glad to hear you come right out and say that, because I have been waiting until someone with some degree of authority spoke a couple of weeks ago on it.

Now I want to refer to page 2 of your brief, where you comment on the witness from the state of Oregon. It is unfortunate that he appeared in the afternoon after Professor Kalant spoke in the morning. He is unquestionably an

expert insofar as one can define the word "expert". Both Professor Kalant and I listened to the witness from Oregon in the afternoon and you could not have expressed yourself in better language than saying just what you did in that paragraph, and I want to congratulate you on that.

Then, turning to page 7, we come again to the question of soft or hard drugs, and as a medical man it is hard for me to understand that. To me a drug is a drug. You say there;

This first reason for the change, therefore, we consider as being minor and simply one of semantics

And that is correct,

because, whether a substance is a drug or a narcotic, and we would submit that the French word "stupéfiant" is a much more appropriate designation.

I think that has been very vividly clarified to a lot of people, and you have brought that in, and again I congratulate you. As a matter of fact, I like your brief very much.

Senator Neiman: Chief Gregory, may I review something you mentioned earlier? Is it the position of your committee that every one who is guilty of committing a second offence should be placed in some form of incarceration or detention or isolation or be subject to some type of restraint like that? I thought I understood you to say that.

Chief Gregory: I am trying to go back over the sections. I think we have to have a minimum sentence to allow the courts to do something with that accused person.

Senator Neiman: So you feel there has to be a jail sentence of some form of confinement or isolation?

Chief Gregory: Yes.

Senator Neiman: I believe you also said that you felt this on the grounds that some of these people have emotional or psychological problems that we have to find and root out, and that it is to be hoped that we will find the good in them by putting them into confinement. Is that your position?

Chief Gregory: That is correct, senator.

Senator Neiman: You have had many, many years of experience with law enforcement and with our penal system. Is it your position that jail rehabilitates people?

Chief Gregory: No, that is not it. A rehabilitative institution is different from a jail, as such.

Senator Neiman: But do we have one?

Chief Gregory: Well, let us get one.

Senator Neiman: Are we going to put a million people in it, if you have the forces to catch up with them and put them there?

Chief Gregory: We put many millions of children into school and thousands of children into private schools.

Senator Neiman: That is right; we are talking about a different process, though.

Chief Gregory: True.

Senator Neiman: Because you are talking about something that is compulsory and part of our criminal law. You want it to be part of our criminal law, so you are endeavouring to put a large number of people—it goes without saying that it will not be a million, because you

could not catch them, but apparently that is the figure spoken of most frequently as our estimate of the number of people in Canada who smoke these cigarettes once or twice, or a dozen times, or maybe more frequently. I cannot see how that would achieve what you term a credible law.

Chief Gregory: Now we are right back to the question of: Are drugs acceptable in society?

Senator Neiman: That is right, and you have made the point with respect to drugs, including alcohol and tobacco, which we have decided are acceptable and about which I have articles here from a recent issue of the *Globe and Mail* with respect to the scene in Toronto. We have heard testimony in the last couple of weeks that alcohol today is a much greater problem, that the incidence of the use of drugs seems to be decreasing, and that the use of alcohol, particularly among younger people, is increasing. That is a dangerous drug, as you know. You know, perhaps, that it causes more social dislocation—

Chief Gregory: True.

Senator Neiman: ... more crime in many ways, because it encourages aggression and has other effects. We are endeavouring to find a solution to the obvious fact that people today, whether we like it or not, are making a choice of a type of drug. I do not think Canada is about to make the use of every drug that we know to be a drug a criminal offence. We are not going to do that, nor with respect to alcohol and tobacco. We have other laws dealing with other forms of drugs. So, in this committee we are attempting to find a rational method of dealing with the obvious fact that some people will use this. I must say to you that I have heard distinguished or well-known radio commentators on our networks quite freely speaking of the fact that they have smoked marihuana over a period of years. They are, by their own admission, frequent repeaters and offenders according to our law. I have known children in high schools who have taken drugs, marihuana, at least, and I cannot believe in my heart that it would be better to take those kids and put them away, wherever you want to put them, than to allow their families, society or their peer groups to deal with them.

You mentioned that you feel that marihuana smokers seem to have an evangelistic approach in prompting others to the use of the drug. The suggestion has been made here, which I find very convincing, that much of this is caused by the fact that, with respect to children particularly, they do what their friends do, which is the peer group pressure. It is not evangelism in the sense in which you refer to it. It is a very common phenomenon with respect to teenagers particularly. No matter what they do, using motorcycles or experimenting with marihuana, they will go through it, and there are stages attached to it. I am concerned that you are taking too strong a position and that it will not achieve what you really want, as do the members of this committee, for our society.

Chief Gregory: You referred to the person on television saying that he has smoked marihuana. My goodness, how can this happen? Why should it happen? Violence on television is abhorrent. The fact that the peer groups lead your child into the depths of marihuana leads you, with deference, senator, to the attitude of the over-indulgent mother who says her boy is all right and it is the bad kid down the street who leads him into this.

Senator Neiman: May I correct you on that point? I do not take that attitude and have made it very plain in

conversations with our children that I consider it to be a dangerous drug, as I also regard tobacco, for instance. However, I explained that the other is inhibited today by being the subject of a criminal offence. Certainly I do not condone it and would discourage it, as I think all here would, but it is the only way to treat an obvious fact.

Chief Gregory: Do you not believe that the deterrence of prosecution would have an effect? The age for juveniles varies across Canada.

Senator Neiman: Yes, it is 16, 17 or 18.

Chief Gregory: In my opinion, there should be a national definition of "juvenile". Believe it or not, in one province it is one age for boys and another for girls. The civil liberties groups have not yet got hold of that, but I hope they will pretty soon. However, the juvenile is very, very rarely prosecuted for the first offence, in my experience.

Senator Neiman: They are treated differently under different laws, so we are not really discussing juveniles as far as this bill is concerned, chief, because it applies only to adults.

Chief Gregory: I am sorry, senator, it does apply to juveniles, because of the legislation.

Senator Neiman: But Bill S-19 applies only to adults.

Chief Gregory: It will also apply to juveniles; I am sorry.

The Chairman: They will be treated under the Juvenile Delinquents Act.

Chief Gregory: We are not asking that the minimum penalties, as such, apply to juveniles, but to adults of 17 or 18 years and up, or whatever the age may be in various provinces.

Senator Neiman: You also made a statement that you feel very strongly that the use of marihuana would lead to the use of other drugs, and you feel that there is a direct correlation. When you quoted figures to Senator Croll a few minutes ago I was going back over some of the statistics in our possession, which were provided to us by the Department of National Health and Welfare. These were compiled by the Bureau of Dangerous Drugs, and indicate that in Canada total cannabis convictions on a national level in 1971 were 6,270, out of a total drug conviction figure for all offences of 8,501. This has increased through the years and in 1973, which is the last year given, there appear to have been 19,000-odd convictions for cannabis offences, as opposed to 23,000-odd convictions for all types of drug offences. Percentages are also given. There is no percentage for 1970, for some reason, but for 1971 the percentage of cannabis of all drugs was 51 per cent; in 1972 it was 24 per cent. I do not know why it dropped down to that low figure. In 1973 it increased to 70 per cent. I have seen somewhere the figures for 1974, or part of them. The total number of convictions for cannabis offences appears to be going up in relation to all offences, which has a number of significances. One of them appears to be that there are less people being convicted of all other types of drug offences. There are more people, out of the total drug population using cannabis alone, if we can use these statistics. It seems to me to contradict the point you are trying to make, at least to the extent that if people use cannabis they are inevitably going on to the use of other drugs. The trend seems to be going the other way.

The Chairman: Senator Neiman, what is your question? We now have very limited time.

Senator Neiman: My point is that I do not think it necessarily follows.

Chief Gregory: I said it does not necessarily follow that cannabis users go on to heroin. If you received any other impression, I apologize. It is definitely stated in our brief that this does not follow. But every heroin user—

Senator Neiman: —might have used it, or probably has.

Chief Gregory: —in all probability has. On page 7 we say:

We clearly understand that not all persons who use soft drugs become hard drug addicts but a significant percentage of such persons do so.

Senator McGrand: Mr. Chairman, I agree with the witness that we should determine the emotional problems of young people before they get hooked on drugs. My question is in two parts. Have you any evidence of criminals who commit crimes of violence and who made the smoking of marihuana the first step in crime?

Chief Gregory: I wish we had undertaken that research before coming here. I am convinced beyond all reasonable doubt that we could have come up with sufficient evidence to convince you that that is the case.

Senator McGrand: That is very important. If you do not have it, someone should have. Someone should do research in this field. I am of the opinion that most people who commit murders are not on drugs. Is that right?

Chief Gregory: I think the majority of murders are crimes of passion.

Senator McGrand: How would you distinguish those who get into crimes of violence because of their progression from soft drugs to hard drugs? Have you any evidence of that? That is part of the same question.

Chief Gregory: I do not have those figures before me, but I am convinced that those statistics are available. I suppose you would have to go to the murderer to find that out.

Senator McGrand: You have answered my question. Make a note that someone should do this research.

Chief Gregory: May we do some research and get back to you, sir? With regard to drug-related crimes, I have here a picture of two bodies of people murdered and placed in a bathtub. That was drug related. I have here a picture of a courier slain in the street.

Senator McGrand: Like the Manson case in California. Those are drug related crimes.

Chief Gregory: I think the majority of major crimes involving violence are drug oriented. I cannot give you statistics at this time. In my discussions with colleagues we hear consistently that a person on drugs was caught at a bank holdup or was killed. My colleagues may have specific instances. I live in a quiet town. We have only a few bank holdups.

Senator Laird: I am sure that includes alcohol.

Chief Gregory: Very seldom do you see an intoxicated person involved in a bank holdup.

Senator Laird: But he has some dutch courage.

Chief Gregory: Yes; he may have had a few belts before going there, but the majority are the other way.

Senator Laird: The majority go on an empty stomach.

The Chairman: In any event, Senator Laird, it does not include tobacco!

Senator Laird: That is very good.

The Chairman: Thank you, Chief Gregory, and your associates for coming. I apologize to honourable senators who wished to ask questions. We have the Canadian Bar Association to appear before us and the committee room has been reserved for another committee shortly after 5 p.m.

The Canadian Bar Association is represented by Mr. G. Greg Brodsky of Winnipeg, who is Chairman of the Criminal Justice Section. I believe honourable senators have before them the brief which Mr. Brodsky is going to present.

Senator Croll: Not read, I hope.

The Chairman: It all depends on how fast he reads.

Senator Croll: He should be able to present it.

Mr. G. Greg Brodsky, Chairman, Criminal Justice Section, Canadian Bar Association: Mr. Chairman, I could read it quickly. If the members of the committee have time, they could read it at home.

Senator Croll: If you present it, we will read it at home.

Mr. Brodsky: I might indicate at the outset that I am not presenting any philosophical basis as to whether the bill should or should not be changed. I am presenting some legal positions, in view of the testimony which has been presented before you on other occasions.

I might indicate that on pages 1 and 2 we have dealt with the situation regarding terms. I do not propose to get into the terms of what is meant by "legalization" or "decriminalization". I refer you to the Single Convention on Narcotic Drugs. Because of the testimony which you have had before you on other occasions, I know that you have heard about and read that. I do not propose to read it again. I commend it to you because, in order to consider amendments to the bill, you have to consider the fact that Canada is bound by that Single Convention.

I wish to express some legal opinions, however, on page 3, in connection with that convention and the proposed amendments to the bill, and to advise that the Single Convention deals with the cannabis plant. It does not appear to deal with the leaf of the cannabis plant. That seems to be left out; and THC, on which you have heard medical and psychiatric testimony, is not bound by the Single Convention but by the Convention on Psychotropic Substances 1971, by which Canada is not yet bound. Marihuana is classified as a narcotic under the Single Convention; THC is classified as an hallucinogen. Your committee has heard testimony to the effect that THC is the principal active ingredient in cannabis preparations. No matter what you do with this bill, you must appreciate that terms are going to be very important. Even if you move it from the Narcotic Control Act to the Food and Drugs Act, it will still be considered a narcotic by law under the Single Convention, and it is so referred to under article 36 of that treaty.

Insofar as page 3 of the brief is concerned, subparagraph (a) is backwards. It should read:

(a) The transfer of cannabis related offences from the *Narcotic Control Act* to the *Food and Drugs Act*—

The Chairman: Since this deals with decriminalization, I would suggest that Mr. Brodsky read these paragraphs into the record. There have been a good many questions on decriminalization, not all of which have been answered.

Mr. Brodsky: After discussing legalization on page 3 of the brief, the following appears:

As an alternative to "legalising" cannabis, much has been said about "decriminalizing" the offence of simple possession.

I apologize for the use of the word "simple" in view of the other remarks I made. I mean "possession".

The Chairman: You are in good company, and we are all lawyers.

Senator Godfrey: I still like it.

Mr. Brodsky: When I say "much has been said," I mean that much has been said before this august body. Continuing:

Unfortunately, the term "decriminalization" has not been used consistently, and a number of definitions have been proffered. It has been used to mean:

(a) the transfer of cannabis related offences from the *Narcotic Control Act* to the *Food and Drugs Act*

(b) making simple possession of cannabis and its derivatives a "non-criminal" offence

(c) removal of the stigma which results from a conviction being entered

(d) removing the provisions for incarceration with respect to the offence of simple possession of cannabis

(e) removing all penalties for simple possession of cannabis, but retaining the penalties for trafficking and related offences.

It is the submission of the Canadian Bar Association that there be one definition used in respect of the term "decriminalization."

That is the definition used in (c); that is:

For the purpose of this brief, when the term "decriminalization" is used, it is meant the removal of the stigma which follows from a conviction for possession of cannabis, as well as removal of the provisions for incarceration for persons so convicted. Bill S-19 accomplishes the latter, but does not deal with the former. Bill S-19 eliminates the possibility of incarceration for those persons convicted of the offence of simple possession of cannabis, except in default of payment of a fine.

The brief then goes on to deal with subsequent offences.

If I may now turn to page 5 of the brief, this was included in the brief because of the presentation made by the Canadian Medical Association, and I am referring specifically to Issue No. 5 of the committee's proceedings at page 9. In this connection, at page 5 of the brief, we state:

Although transferring cannabis from the *Narcotic Control Act* to the *Food and Drugs Act* may be more consistent with the pharmacological facts relating to

this chemical, it does not alter the criminal nature of the offence and the record which follows. The Le Dain Commission in its report made this very clear.

In other words, whether it is under the *Food and Drugs Act* or the *Narcotic Control Act*, or whatever, it will still be a criminal offence. Regardless of what act it appears under, it will not alter the fact that it will be a criminal offence. There seems to be a misconception on the part of the Canadian Medical Association in this respect, as is evidenced in its presentation at page 9 of Issue No. 5 of the committee's proceedings.

Members of the committee asked questions of the previous witnesses in connection with examples of situations. Rather than give hypothetical examples, I point to an actual court decision as to what "criminal" means. This is a decision of *Regina vs. Simpson, Mack and Lewis*, a 1967 decision of the British Columbia Court of Appeal. In delivering the judgment of the British Columbia Court of Appeal, Mr. Justice MacLean said:

The prohibition against the substance marijuana is a clear invasion of the field of criminal law as contained in the *Narcotic Control Act*.

And he was referring to a provincial act in respect of LSD and marihuana. Continuing:

In my view the fact that the prohibition against the possession of LSD is linked with the prohibition against marijuana in a statute passed at the same session of the Legislature as the legislation impugned affords a basis for a conclusion that the prohibition against LSD is also an invasion of the field of criminal law.

So that whatever act it appears under, it is still going to be a criminal offence. A conviction of possession of cannabis pursuant to Bill S-19 still remains a criminal conviction in a very real sense. It does not "decriminalize" this offence.

In dealing with the Identification of Criminals Act, I should like to depart from the brief. I do not think the testimony presented to the committee in respect of the Identification of Criminals Act has been as clear as it perhaps should be. The Identification of Criminals Act does not apply on conviction; it only applies when a person is charged with an indictable offence. It does not apply when that person has gone through the court system. It only applies on his arrest; that is, when a person is arrested on an indictable offence, not when he goes to court. It has nothing to do with discharges or pardons of any kind by the court; it deals with the arrest of the person. When a person is arrested on an indictable offence, he is obligated to attend with a police officer for fingerprinting and photographing. That is an obligation on arrest. If after the fingerprinting and photographing has taken place, the RCMP or some other authority decides that the charge should not be proceeded with, whether because there was not sufficient evidence in the first place for the charge or because the drug did not analyse out to be a controlled or restricted drug, and the charge is discontinued or no evidence offered in court, nothing can be done with regard to that individual's fingerprints and photograph. The Identification of Criminals Act is not a statute that applies to a conviction; it only applies on arrest. Insofar as the earlier testimony before this committee is concerned, it should be made clear that the Identification of Criminals Act is not affected at all by what the court does. If the court grants an absolute or conditional discharge, or no evidence is offered, that record is not destroyed.

Senator Croll: You are getting a little ahead of us, Mr. Brodsky. If a person is charged and the next morning that charge is dropped, a copy of that charge would not be available to me if I attempted to obtain it.

Mr. Brodsky: That is right, but the individual's fingerprints and photograph remain.

Senator Croll: Yes, but that is all. The charge or record is not available to me, or to anyone, and the police department has no right to produce it or to say anything about it, and they do not.

Mr. Brodsky: That is right.

Senator Croll: So, it is a nullity for all purposes.

Mr. Brodsky: Well, it is not a nullity for all purposes.

Senator Croll: For that purpose.

Mr. Brodsky: If a credit agency wanted to find out whether a particular person in those circumstances had been charged, that information would not be released. I am not here to argue as to whether or not the Identification of Criminals Act should be amended. I just want members of the committee, in dealing with Bill S-19, to understand the effect of that particular legislation as it pertains to the bill before you. If in fact it should be amended, that should be done at another time and perhaps by some other body.

Senator Neiman: I think the point was made by one of the defence counsel groups that appeared before the committee that the practice of fingerprinting and photographing in those circumstances was wrong. It probably has to do simply with the amendment of that particular act, but the submission was that it was wrong because one cannot get back one's fingerprints or photograph even though the charge is withdrawn.

Mr. Brodsky: There are some arguments set out at the bottom of page 7 and on page 8 as to whether or not it should be amended. I do not propose to read that portion of the brief at this time. I propose to move on to the question of discharges. That would be of some great concern, I think, to senators in view of the debate that has been presented to you. I use the word "debate" advisedly in connection with the effect of a discharge and the effect in court of Bill S-19, and what should happen to people who are either convicted or plead guilty to a charge of possession, by which I mean simple possession—I do not mean possession for the purpose of trafficking, but possession. That is section 662.

What happens under section 662 is that the court has an accused person come before it. The accused person is asked how he pleads, and he pleads guilty or not guilty. If that person pleads guilty, the court is then presented with the facts in most major cities by a Crown attorney; it is presented with whatever can be said in mitigation of sentence by defence counsel or by himself, and the judge then determines what will happen. He will then either fine him or incarcerate him, or do whatever he wants. If the offence is punishable by imprisonment for less than 14 years the judge may determine that a discharge is appropriate, and he can, on that plea of guilty, discharge him instead of convicting him.

Senator Laird: Conditionally or unconditionally.

Mr. Brodsky: That is right, conditionally or unconditionally. The section does not say "convict and discharge":

instead of convicting him he can discharge him. If that same person comes before the court and pleads not guilty, the court can convict him and then impose a conditional or unconditional discharge.

When defence counsel appeared before you earlier, on March 4, they were not referring to people who pleaded guilty when they said that the effect of a conditional or unconditional discharge is that a person has to say, "I was convicted but I was discharged," if asked if he was convicted; they were speaking of people who come before the court and plead not guilty to the charge, because the section itself deals with a conviction only, as opposed to a plea of guilty. I said that I was not trying to amend the Identification of Criminals Act, and I do not propose making an amendment to the Criminal Code so far as conditional or unconditional discharges are concerned.

Senator Laird: I hope not; I introduced it.

Mr. Brodsky: I do commend the intent of it, but I think that there are some amendments that could be considered at another time.

Senator Neiman: Very tactfully put.

Mr. Brodsky: Section 662.1 says:

Where an accused, other than a corporation, pleads guilty to or is found guilty of an offence, other than offence for which a minimum punishment is prescribed by law or an offence punishable, in proceedings commenced against him by imprisonment for fourteen years or for life or by death, the court before which he appears may, if it considers it to be in the best interest of the accused... instead of convicting the accused, by order direct that the accused be discharged absolutely or upon the conditions prescribed in a probation order.

Section 662.1(3) says:

Where a court directs under subsection (1) that an accused be discharged, the accused shall be deemed not to have been convicted of the offence to which he pleaded guilty or of which he was found guilty.

That means, and can only mean, the situation where an accused appeared and pleaded not guilty, because in the situation under subsection (1), where he pleaded guilty, the court, instead of convicting him, has imposed a discharge.

Senator Laird: That is very interesting.

Senator Croll: I am now thoroughly confused.

Senator Laird: He has got a point there.

Senator Croll: I should have read the brief. You have got me there.

Mr. Brodsky: I apologize for that. It was sent out about three weeks ago, but I understand it did not come.

The Chairman: We received it only this afternoon.

Mr. Brodsky: In order to be abundantly sure, the reason I did that was because Mr. Merriam once sent me a copy of a letter he sent to the postmaster saying, "I mailed a parcel to Mr. Brodsky two weeks ago. Yesterday I went out to the mail box and beside the mail box was a parcel, and I want to make this complaint." I hand delivered the brief to him, together with a copy of it, and mailed it also. I was told by Senator Neiman today that neither one got here.

Senator Laird: We got it just as we walked in.

Mr. Brodsky: I bring that point to your attention in connection with conditional and absolute discharges. I also want to emphasize that if a person appears before a court charged with possession for the purpose of trafficking and is found guilty of possession only—that is, he is able to establish that the controlled substance, or whatever, was for his own use and not for the purpose of trafficking—if he is able to satisfy that reverse onus, the court cannot use section 662 to invoke a discharge for him, because the proceedings commenced carried more than 14 years' imprisonment. Unfortunately the situation could only apply where an accused would be entitled to a discharge if he were charged simply with possession, not with possession for the purpose of trafficking, and was found guilty of the lesser offence, or did not plead guilty to simple possession, or to a charge for the purpose of trafficking, and had that plea accepted by the court on the consent of the Crown.

Senator Croll: I have just taken a quick look at the brief and I very much appreciate the amount of work contained in it, but in the main you are dealing with legal matters.

Mr. Brodsky: Yes, I am.

Senator Croll: We have our own views on legal matters, but in the end we wind up with the Law Clerk, and we say to him, "What is the answer to this sort of thing?" We have to do that to get the answer. Are there no recommendations included in this brief?

Mr. Brodsky: There are some recommendations, in connection with pardons for instance.

Senator Godfrey: I must say, I do not agree with Senator Croll at all. I think the witness can assist us in legal matters. We don't agree on legal matters.

Senator Croll: We do not decide legal matters. They are decided elsewhere.

Mr. Brodsky: I might suggest that if the Senate has problems, if it has in mind that it wants to recommend the implementation of a law and does not want to be stuck by obstacles presented to it, it should present the obstacles to the draftsmen and say, "These are the problems. We do not want this pitfall in the new legislation so that we get into the situation that we did with conditional and absolute discharges."

Senator Laird: That is right.

The Chairman: I think that point is well taken.

Senator Laird: I do too.

The Chairman: That is why we invited the Canadian Bar Association.

Senator Heath: Carry on, Mr. Brodsky.

Mr. Brodsky: At page 10 I refer to a court decision. The reason I did so was to show that courts do not apply provisions across the country equally. That decision was important enough to be reported. The judge said he would not use the discharge section except in extraordinary cases, despite agreement by crown attorneys and defence counsel that the discharge section should be used. In the fourth last line on that page he says:

In fine, it is my opinion that the discharge—the finding of guilt without the usual concomitant of conviction—should never be applied routinely to any criminal offence in effect labelling the enactment violable.

It should be used frugally, selectively and judiciously, as Parliament obviously intended. If it is considered that an absolute or conditional discharge is the appropriate penalty for a first offence under this section, then Parliament should so declare. The courts should not compromise or circumvent the law.

That was because the Crown attorney in the case, as the judge said in the first sentence, appeared to agree that a discharge should be imposed. You heard from the police chief just before this, that where the enforcement agencies have a certain view, that will happen; that is, the view will be carried forth. That is not necessarily so, and this case shows that it is not necessarily so.

I wish to leave page 11 and page 12 and refer to the bottom of page 12 and page 13. I come to one suggestion that is made by the Canadian Bar Association to deal with decisions like the court decision I have just referred to. I know that in Toronto, especially, and perhaps here too, the Bail Reform Act is a nasty word to use; but the provision adopted in the Bail Reform Act is that where a person appears before a court the onus is on the Crown, not on that person, to justify the continued detention of that person. That was the concept as set out in the Bail Reform Act that has now been adopted into law and is causing some commotion. It could be adopted in so far as Bill S-19 is concerned, with regard to discharges. If it is the intention of this body to have a person who appears before it discharged, if he is charged with possession only, then the same provisions as appear in the Bail Reform Act could be applied to the Food and Drugs Act; that is, that the Crown should justify to the court why a discharge should not be entered. That concept is one that has been adopted and, in my submission to you, it has worked fairly well across the country, generally speaking; that is, reversing the onus of whether the discharge should go, from what appears in the decision I read to you, to the Bail Reform Act—that is, that the Crown should justify it because a man may have a previous record or he may be a person who is unco-operative. And I do not mean unco-operative because he does not want to make a statement to the police or does not give his proper name, but he could be intractable because he has other convictions and this is only one item to show a contempt of the court and of the judicial process, or it could be that he has other matters that would justify the entry of a conviction as opposed to a discharge. If the Crown has that information before it, it could justify to the court why a discharge should not be granted. And if the court is satisfied, it could refuse to grant a discharge.

Insofar as conditional discharges are concerned, I refer at page 14 to the Canadian Medical Association brief, and I have quoted the sentence that I wish to make particular note of. That is:

That legislation be enacted to provide for the destruction of all records of a criminal conviction after a reasonable period of time.

The Canadian Medical Association has suggested that there be an automatic erasure of the criminal record after a two or three year "charge-free probationary period" has elapsed.

I point out that—

The Chairman: I suggest that you continue reading, Mr. Brodsky, because this is another matter that is important and is giving us a lot of concern.

Mr. Brodsky: Yes, Mr. Chairman. The brief continues:

The difficulty with this suggestion is that during the two to three year probationary period, the offender must suffer the burden of a criminal record.

Where a conditional discharge is imposed, on the other hand, the probationary period still exists, but during the currency of the probationary period the offender is able to state that he has no conviction for the offence involved. In both cases, should there be a failure to comply with the conditions of probation, the offender will pay the penalty with a permanent criminal record (unless a subsequent application for a pardon is successful).

This might be a propitious time to deal with the question of pardons.

Senator Neiman: We would like to have that clarified.

Mr. Brodsky: I am moving away from the brief now, with your permission. On another day you had before your representatives of the National Parole Board, to tell you what effect, in law, a pardon has on a person. In his testimony to you, the witness said that a person who was pardoned of an offence was able to say to the world, if asked whether he had been convicted, "Yes, I was convicted but I was pardoned." He cannot say, "I was not convicted," or he cannot say, "I am not convicted," or he cannot say, "It is none of your business," if it is a question which it is legitimate to answer. He cannot say any of those things and he cannot say, simply, "I was pardoned." He could say that, but that would obviously mean, to the person who asked the question, that he was convicted; otherwise there would be no necessity for a pardon to be entered.

Senator Heath: Mr. Brodsky, could he say, "I have no criminal record"? Would that be a proper response after a pardon?

Mr. Brodsky: The Parole Board representative said that one cannot say that. The Parole Board representative said that that person must reply, "I have a record, but the police have investigated me and have submitted recommendations to the Parole Board. A hearing has been held, and I have been a good boy for two years" or five years,—depending on what the conviction was entered for—"—and they have seen fit to grant me a pardon."

Senator Heath: Is this different from having a criminal record removed? That is a different process that you go through?

Mr. Brodsky: I do not agree with the Parole Board on that interpretation. That is the reason I want to bring that up now. You have had testimony on this point and you have not had testimony contrary to the position taken by the Parole Board. So I do not want you to think that there is no dispute insofar as the interpretation of the Criminal Records Act is concerned. I do not adopt that same view.

I might read to you from the Criminal Records Act, so that you can decide for yourselves. I know most of you are lawyers. You can come to your own conclusion, in the same way that I did. Section 5 of the Criminal Records Act reads as follows:

The grant of a pardon

(a) is evidence of the fact that the [Parole] Board after making proper inquiries, was satisfied that an applicant was of good behaviour and that the conviction

in respect of which the pardon is granted should no longer reflect adversely on his character;—

My position is that the representative of the Parole Board who appeared before you stopped there. Let me continue. There is a semi-colon there, and then there is the word "and" and then there is subparagraph (b), and it is that subparagraph (b) that does not appear to have been presented to you. There is "and (b)". It says:

(b) unless the pardon is subsequently revoked, vacates the conviction in respect of which it is granted and, without restricting the generality of the foregoing, removes any disqualification to which the person so convicted is, by reason of such conviction, subject by virtue of any Act of the Parliament of Canada or a regulation made thereunder.

I do not think the (b) part was presented to you. There is no "or" there; the word is "and". It "vacates the conviction". That is the wording of the statute. So you should appreciate, when we are talking about the effect of a pardon, that those words regarding the effect of a pardon are in the statute also. But the effect of a pardon is twofold: in the first place, it shows that an inquiry was held, it shows that the board determined that the conviction should not reflect adversely on his character; and (b), which is more important, in my submission, to the applicant, it vacates the conviction. That is really why people apply for a pardon. They do not want to wave a document about saying, "I was convicted. Let me into the United States. Let me be a postman. Let me be an RCMP officer."

Senator Croll: What you are saying is that the answer is no.

Mr. Brodsky: That is right. In answer to the question, "Were you convicted?", he should not have to say, "My conviction was vacated."

Senator Croll: We went over that very thoroughly with them. I am surprised that such knowledgeable people left us that impression. I went over it with them, and there were others who went over it with them. I assumed they knew the act backwards. How could they be so mistaken?

Mr. Brodsky: I know you went over it, senator, because I read the testimony in which you said that. If it had not been for that testimony presented to you, I would not be bringing this up now.

Senator Croll: I think Mr. du Plessis should bring it to the attention of the department. It would be too bad if they were honestly mistaken, because it is most important to us.

Senator Laird: That is another good point. Mr. Chairman, I would like to move that the complete brief be printed as an appendix to the record.

Mr. Brodsky: Might I ask, Mr. Chairman, that when it is printed the change I suggested on page 3 be made?

The Chairman: Certainly.

Is that agreed?

Hon. Senators: Agreed.

The Chairman: Carried.

(For text of brief see appendix B).

Senator Neiman: Mr. Brodsky, is the effect of subparagraph (b) to say that the conviction is vacated provided

there is no subsequent offence registered? Is that what it says?

Mr. Brodsky: There is a provision to revoke the pardon. If a person is pardoned and gets into trouble again, there is a provision not only to deal with him for his new trouble but to take away the pardon.

Senator Neiman: Suppose the conviction is vacated and he is charged with a subsequent offence, the fact remains that that conviction is still on the records somewhere. If he were to get up and say, "No," as you suggested, when asked if he had ever been convicted of a previous offence, the fact is that the information would be available to the Crown, or anybody else, that there had indeed been a conviction but that it was at some point vacated and then was tucked away.

Mr. Brodsky: That is correct.

Senator Neiman: So the vacation of the conviction is not a true vacation, because somewhere those records always stand.

Mr. Brodsky: Well, let me say that the Identification of Criminals Act leaves you with a record. By that I mean a record of the fact that you were arrested, not the fact that you were convicted. It leaves you with a record so that the police know you have been in sufficient trouble that you were subject to being fingerprinted. If a person is acquitted of an offence, there is a record of that. Records are kept. If there is a stay of proceedings entered, there is a record kept of that.

I should point out that a different procedure obtains in Manitoba and British Columbia than in the rest of the country. In the rest of the country either a charge is withdrawn or the Crown offers no evidence or closes its case when it has not sufficient evidence. In Manitoba and British Columbia, however, the Crown enters a stay of proceedings, which is a term of the Criminal Code meaning that the case is permanently adjourned. The Code then says that after one year, if no proceedings are recommended on the charge for which the stay was entered, the charge is deemed never to have been commenced. Nevertheless, a record is still kept on the fact that the stay of proceedings was entered.

If I were an RCMP officer, I could inquire and find out whether or not a stay of proceedings had been entered ten years ago in connection with any one of the honourable senators here. So when we talk about a record we talk about a record of what happened, not a record of conviction. And the fact is that records must be kept.

The same holds true with respect to pardons. If a man comes before a court, is convicted of an offence and is then subsequently pardoned, you cannot erase from the memories of people the fact that he came before the court and was convicted. You cannot tell the press to have a selective memory. You cannot legislate forgetfulness. For example, when the Beatles appeared in London some years ago one of them was charged with possession of marihuana. He got a discharge. Well, the discharge was reported, and whether or not he was convicted and got a subsequent pardon makes no difference because you cannot legislate forgetfulness in the minds of the public.

The point is that conviction is a serious business. For example, if you have been convicted you cannot be bonded. There is a multitude of activities denied to people with

convictions. For that reason I say it is important, despite the fact that you cannot legislate forgetfulness, to have pardons continue to be part of the law. It is important that people continue to apply for pardons, and I agree with honourable senators that some way should be found to speed up the granting of pardons.

Senator Godfrey: I certainly think that at least an argument can be made for the department's position that because a conviction has been vacated it does not mean that the person has never been convicted. But is the opinion you are expressing now the general legal view of those in criminal practice?

Mr. Brodsky: Well, senator, it could not be the general view, otherwise you would not have had any testimony on it. It certainly could not have been all-inclusive. The fact is that there is a dispute.

Senator Godfrey: What I meant was: did you have a committee of lawyers, all of whom agreed that what you are now saying is correct?

Mr. Brodsky: Other lawyers I have spoken to agreed with this view, yes, but I cannot tell you that all lawyers in Manitoba or all lawyers in Alberta agree with it. I can say that a substantial number of them agree, but that is all I can say.

Senator Godfrey: Thank you.

Mr. Brodsky: At pages 15 and 16 I deal with the Oregon position with regard to amounts. I set out some of the difficulties there. At page 16 you will find that they use an ounce as less serious and more than an ounce as more serious. You will also see that in Oregon they have criminal convictions being felonies, misdemeanours and something they call "infractions." They call an infraction a civil offence. In Canada, of course, a breach of a law designed to protect the public instituted at the suit of the Crown is a crime—period. It is a crime. You can call it what you like—an infraction or anything else. Regardless of the name, it is in fact a crime. For example, making a left turn against a sign is a crime. It may not be a serious crime, but it is a crime. Call it a civil infraction if you wish; move it from one act to another or give it another name; it does not destroy the effect of it. It is a crime.

Senator Godfrey: If we were to legislate that a particular act was an infraction and not a crime, would that not permit the person answering the question, "Have you ever been convicted of a crime?", to say, "No"? We can leave it to constitutional lawyers to argue whether it is actually a crime or not, but surely if we legislated that it was not a crime but an infraction that would be an effective way of overcoming the particular problem.

Mr. Brodsky: I have to say that the action would be a crime, regardless of what Parliament determined it to be. If by legislation you said that murder was not a crime but was "X-Y-Z," or any other name you like, it would still be murder. It may be called anything that Parliament determines it should be called, but it will still be a crime. It would simply be a crime by the name Parliament gave to it. That is all.

Senator Godfrey: I see your point.

Mr. Brodsky: At pages 16 and 17 I deal with the Criminal Records Act in relation to pardons and the receiving of discharges.

Regarding page 18, I have already adverted to the situation with regard to stays of proceedings. I do not think I have set out section 508 for you, but I can read it to you. If we are talking about discretions, and you want to know whether or not there has to be a proceeding in a court under the existing law, and if you want to know how to keep people from being convicted of crimes, but still have them brought into court and given a term of probation so that you can see how well they are going to get along, you do not want to see them end up having to go under the Criminal Records Act. We have that situation with regard to stays of proceedings.

Section 508(1) reads as follows:

(1) The Attorney General or counsel instructed by him for the purpose may, at any time after an indictment has been found and before judgment, direct the clerk of the court to make an entry on the record that the proceedings are stayed by his direction, and when the entry is made all proceedings on the indictment shall be stayed accordingly and any recognizance relating to the proceedings is vacated.

Subsection (2) reads as follows:

Proceedings stayed in accordance with subsection (1) may be recommenced, without laying a new charge or preferring a new indictment, as the case may be, by the Attorney General or counsel instructed by him for the purpose giving notice of the recommencement to the clerk of the court in which the stay of proceedings was entered, but where no such notice is given within one year after the entry of the stay of proceedings, the proceedings shall be deemed never to have been commenced.

Those words "shall be deemed never to have been commenced" are interesting. I do not know what use you make of those if you are asked, "Were you ever charged with an offence?" As you know, most federal employment agencies ask you that, "Were you ever charged with an offence? Were you ever convicted of an offence?"

Senator Croll: Well, the question is usually, "Were you ever convicted?" but hardly, "Were you ever charged?" because the fellow who is asking it has been charged too with violating traffic signs and that sort of thing.

Mr. Brodsky: I think you will find in many employment agencies the question, "Were you ever charged with an offence?" is asked hundreds of times.

Senator Croll: On the application? I have never seen that. It is new to me. "Have you ever been convicted?" I have seen many, many times, but not the other one.

The Chairman: I have seen the other one, "Have you ever been charged with an offence?"

Mr. Brodsky: If you want to be truthful, I do not know how you are going to set about it, assuming you are not a lawyer.

The Chairman: You mean a lawyer knows how not to be truthful?

Mr. Brodsky: He knows how not to answer. You know that you were arrested. You saw the charge. The charge was on a paper, and it was sworn. You saw that, and you were taken into court. You know you were there. You know they would not let you out of jail for two days until your lawyer made his application to the judge. The question then appears on your application to be a food service

attendant, "Were you ever charged?" You know there was a stay of proceedings, and you know that the section says, "Proceedings shall be deemed never to have been commenced." Now, what the answer to, "Were you ever charged?" is, I do not know.

Senator Croll: He can be his own judge, can he not, and say, "No"? He would not be dishonest in making that statement, I do not think.

Senator Neiman: After one year.

Senator Godfrey: It would be quite simple for the act to go on and provide, "He may say . . . " et cetera.

Senator Croll: I do not think he has to say that.

Mr. Brodsky: In any event, as I say, I do not want to amend the whole criminal law here today.

Senator Neiman: You have just done it.

Senator Croll: You are doing pretty well.

Mr. Brodsky: Insofar as the last paragraph on page 18 is concerned, I point out one of the difficulties with the Criminal Records Act as it now stands, but I wonder if I might skip that, because I know we have little time. Perhaps I could skip to page 19.

The Chairman: Do not skip anything important. We have another half hour.

Mr. Brodsky: I can summarize, however.

If we were going to make some changes in the legislation, perhaps we could legislate that the fact of a pardon, the fact of a discharge, or the fact of a stay of proceedings, should not be disclosed by anyone. That is a suggestion that I just throw out.

On page 20 of the brief I say:

By virtue of section 576.2 of the Criminal Code of Canada, it is an offence for a member of a jury to disclose the proceedings in the jury room. Furthermore, a justice at a preliminary inquiry has the power to order that the evidence heard on the preliminary inquiry shall not be published in the newspapers, and an offence is created for non-compliance with this order.

What I am suggesting, contrary to what I said before, is that if you were going to make amendments you might want to consider making one to the effect that if a person is granted a pardon or a discharge under Bill S-19, his discharge or his pardon not be published, and that before an agency could make public the fact of a conviction it should check with the central authority to make sure such an order was made and a pardon granted.

Legislation requiring people not to disclose things has been used in connection with other offences, for instance, jury deliberations and things that happened in public, such as bail hearings, or, more properly, I suppose I should say applications for judicial interim release. While they are in public, no one can disclose them unless a court so orders. I think you might want to consider whether or not that should be amended.

I would like now to leave possession aside and move to page 21 of the brief and deal with the question of trafficking as proposed in Bill S-19.

There have been many definitions of trafficking, as appears from the transcript of proceedings before this

august body. You have heard definitions of trafficking by the police chiefs association today. I set out section 2 of the Narcotic Control Act, and what it means by "trafficking". Perhaps I might answer the question asked about 3 o'clock this afternoon. If I offer someone a drag on my cigarette, and if it is a marihuana cigarette, I am trafficking, whether he accepts my offer or not. That is the law. The answer that you received this afternoon was, "Well, we would overlook that breach of the law," but the fact is, that is the law, and if you want to make amendments to the law you should not make amendments giving powers to people to enforce things that you do not consider they would be enforcing. You should not leave things to their good graces, because people change with time. The section says:

"traffic" means

- (a) to manufacture, sell, give, administer, transport, send, deliver or distribute, or
- (b) to offer to do anything mentioned in paragraph (a) otherwise than under the authority of this Act or the regulations.

That has nothing to do with vending and nothing to do with selling, and if you were at a marihuana party, or pot party, and one cigarette was passed around till there was no more left, everyone in that room would be trafficking, and if there were ten people there and ten people smoked it, ten people would be guilty of trafficking.

Senator Godfrey: Not the last one.

Mr. Brodsky: I stand corrected.

The Chairman: I am beginning to suspect your activities, Senator Godfrey. You wait until the end.

Senator Godfrey: It is all right as long as you do not pass it along.

Mr. Brodsky: On page 22 I say:

Section 33 (with respect to controlled drugs), and section 40 (with respect to restricted drugs) of the Food and Drugs Act define "trafficking" as follows:

"traffic" means to manufacture, sell, export from or import into Canada, transport or deliver, otherwise than under the authority of this Part or the regulations.

The activities of giving, administering, sending and distributing constitute trafficking under the Narcotic Control Act, but not under the Food and Drugs Act. Importing and exporting, on the other hand, are considered to be trafficking under the Food and Drugs Act, but not under the Narcotic Control Act. This, however, is not an expansion over the provisions of the Narcotic Control Act, because this latter statute deals with importing and exporting as a separate offence. The Food and Drugs Act creates no separate offence of importing or exporting but deals with these activities as acts of trafficking.

One of the surprising and somewhat anomalous aspects of Bill S-19 is that as far as cannabis is concerned, the old Narcotic Control Act definition of trafficking is adopted. No one who has appeared before this honourable committee has suggested that LSD and MDA are less dangerous substances than cannabis and its derivatives. If, however, Bill S-19 is passed, the Food and Drugs Act will contain a wider and more encompassing definition of trafficking in respect of cannabis than it contains in respect of MDA and LSD.

A recommendation is therefore made that "trafficking" be made the same for the one as for the other.

Dealing with importing, I remark on page 23 as follows:

The penalties for importing and exporting cannabis proposed in Bill S-19 are more onerous than the penalties now set out for importing or exporting controlled or restricted drugs. Under the present Food and Drugs Act, importing and exporting is prosecuted as a case of trafficking. The maximum penalty on summary conviction is eighteen months incarceration. Bill S-19 sets out a maximum penalty of two years, on a summary conviction prosecution for importing or exporting cannabis.

Bu indictment, the maximum penalty for importing or exporting restricted or controlled drugs is ten years. No minimum penalty is set out even where the importing or exporting is purely commercial in nature. When the Crown proceeds by way of indictment under Bill S-19 with respect to importing or exporting cannabis, the maximum penalty is fourteen years incarceration. Furthermore, a minimum penalty of three years is provided for (unless the accused can establish that he was in possession for personal consumption).

There seems to be no apparent reason for this discrepancy in penalties, especially in light of the fact that Bill S-19 treats simple possession of cannabis in a lighter vein than the simple possession of restricted or controlled drugs.

The Canadian Medical Association has recommended a clarification of the definition of trafficking. Under our present definitions many acts more akin to simple possession than to trafficking in a commercial sense, come under the web of trafficking. Under the Narcotic Control Act and under the proposed Part V of Bill S-19, if one individual at a party hands a marihuana cigarette to a friend to smoke, perhaps in return for a similar gesture a week earlier, this would seem to constitute the offence of "trafficking" even if no money changes hands; for "giving" is trafficking. Mailing one marihuana cigarette to a friend is trafficking. If two friends purchase marihuana from the same dealer, each paying an equal share, and one of the two attends on the dealer to pick up the marihuana and then proceeds to deliver his friend's share, this is trafficking.

I have put some cases in here because I suspected you might receive some testimony such as you have received today.

A recent decision of the British Columbia Court of Appeal illustrates just how technical the definition of trafficking is. The case is *Regina v. William Barnard O'Connor* which was decided on January 16, 1975.

So we are not talking about ancient history.

The accused and his wife purchased some cannabis resin and a quantity of LSD. The drugs were purchased by the accused from the joint funds of his wife and himself. His wife knew of the purchase and consented to it. Both the accused and his wife were users and the accused was apprehended carrying home the drugs for their joint personal use.

The accused was found guilty of trafficking contrary to the Narcotic Control Act and contrary to the Food and Drugs Act, and this finding was upheld on appeal notwithstanding the fact that the drugs were for the joint personal use of the accused and his wife. The

British Columbia Court of Appeal held that in essence the accused was in the process of transporting drugs to his wife and that transporting for the use of another person is trafficking under both statutes.

A similar result was reached by the British Columbia Court of Appeal in *Regina v. Taylor*.

This case was decided in 1974.

Here, six heavy smokers of hashish decided that there was an economic advantage to be gained in purchasing hashish in bulk rather than individually. They pooled their money and purchased a quantity of hashish. Unfortunately for the one person charged, he was given custody of the drugs. He hid the drugs in a place where it would be available to all six members of the group on an honour system. None of the hashish was offered to anyone outside of the purchasing group of six. The accused was discovered in possession of the hashish and charged with possession for the purpose of trafficking. A conviction was upheld on appeal because the purpose of the possession by the accused was to "give, deliver or distribute" it to the other members of the group. Taylor was sentenced to four months in jail.

I then quote another 1974 case, in Alberta this time, so you will not think that they are all from British Columbia!

In *Regina v. Sartor* an accused who purchased MDA for himself and his girl friend and after purchasing it carried it to the hotel where the two were staying, was found guilty of possession for the purpose of trafficking.

Another amendment to deal with—and you have to appreciate that I am not advocating different penalties for second offenders when I make my next submission because that is something that honourable senators will have to determine for themselves, but if you are going to make it more difficult for second offenders or for ninth offenders, I do not know if you are going about it in exactly the way you hope to go about it insofar as Bill S-19 is concerned.

Section 48(2) of Bill S-19 provides for differential treatment of first offenders as opposed to subsequent offenders. By virtue of section 48(3), a person who has been previously convicted of an offence under Part V of Bill S-19 or under the Narcotic Control Act is deemed to be a subsequent offender. A person who has a previous record in relation to controlled or restricted drugs under the Food and Drugs Act is not regarded as a subsequent offender.

It does not appear that way to me.

Furthermore, a person with a record under the Criminal Code of Canada for conspiracy to traffic in marihuana, or heroin or in fact any contraband chemical, is not treated as a subsequent offender. If a distinction is to be made between first and subsequent offenders.

And, again, I want to emphasize that I am not recommending that.

It may be worth considering including persons with a previous record under the Food and Drugs Act and under the Criminal Code—(with respect to drug offences) in the definition of "subsequent offender".

I appreciate being able to be with you today and being able to present what I consider to be some problems in connection with Bill S-19. I do not mean by that that I am in any way critical of the drafting of the conditional

discharge section or of any other legislation. But I do appreciate being here this afternoon and being able to present some problems while the legislation is still in the bill stage and before it becomes law.

Senator Croll: Well, I am very glad that you have come here, and I think you did very well, but next time would you mind using a little larger print?

The Chairman: We have followed a different procedure this afternoon, and there have been questions to the witness in the course of his presentation. This, of course, does not preclude further questions, if there are any.

Senator Neiman: Mr. Chairman, may I just ask the witness a question about the concluding sentence on page 26 of his brief as to the distinction to be made between first and second offenders? Perhaps I should say first and subsequent offenders. Are you saying that we should include right in the subsection itself particular reference to the Food and Drugs Act and the Narcotics Control Act?

Mr. Brodsky: Yes.

The Chairman: What Mr. Brodsky has just drawn to our attention certainly is an interesting point.

Senator Godfrey: In other words, you are saying that you could be convicted regarding LDS and it might not be considered a second offence?

Mr. Brodsky: It might not.

Senator Heath: Referring to the bottom of page 21, where you refer to trafficking and definitions, it seems to me that you consider that there probably is too much discretion there. The cases you gave us as references seem to point this out too. But would there not be a time when you would have to have a discretion, because that is the only way you could nail a trafficker, a really big-scale pusher? It may be the only time that you have been able to catch him, so would not that be the time to nail him? It may look like the innocent type of thing that Senator Godfrey was talking about, but if you know that it is not in fact that type of case, then you want to throw the book at him and you need to have this discretion to impose the heavier sentence.

Mr. Brodsky: Well, with the senator's permission, if I might answer that as a defence counsel, I would like to see people convicted and sentenced on what appears in court and not on what somebody may have on file but is not free to reveal.

Senator Heath: But can you look at it from the other point of view?

Mr. Brodsky: Yes, and if you want to maintain the distinction between indictable and summary conviction, that lets the court know that the prosecution considers the matter before it as being more serious than the ordinary case would be and allows the court to deal with it on a more serious basis.

Senator Heath: But then he is out on bail and he is pushing for another six or eight months before the case is heard.

Mr. Brodsky: If he had a record for doing that, well then he just would not be doing it, and if the amount were such that it would establish his activity to be a commercial venture, then it would be such as would disentitle him to

be released and he would not be. And, of course, the courts do sometimes pay attention to amounts in other ways. A man committed for possession of 14.5 pounds of marihuana was charged with possession for the purposes of trafficking. He was tried by a jury, which found him not guilty for purposes of trafficking, but guilty of possession only. The Crown asked what could he do with 14.5 pounds? I make reference now to the other testimony I heard, that sometimes it shrinks a lot. In any event, it was 14.5 pounds in five large garbage bags presented in court and weighed on the scales. Yesterday in Manitoba—I do not know if it is appropriate to use the term “common law wife”—a man and his very close girl friend from England were going to California. They landed in Winnipeg on the way to Vancouver and California. They were sentenced to seven years for possession of five pounds, because seven years is the minimum a court can impose in connection with importing. It appeared that the material was in all likelihood not commercially saleable and the amount was not very much. However, that was the sentence imposed yesterday. Again, that is not an ancient case.

Senator Heath: I would like to thank you very much for a very good brief.

The Chairman: I am interested in Manitoba's definition of a “common law wife”.

Senator Neiman: That is a very delicate reference.

Senator McIlraith: I would like to clarify one point you made with regard to the suggestion for a better definition of trafficking, in which you referred to three cases. At the bottom half of page 25 you describe the *Regina v. Taylor* case in some detail. I did not quite follow how that gives support to your point as to the requirement for a better definition of marihuana. What conclusion were we to draw, having read the *Regina v. Taylor* case? Do you say that it is not a proper case for trafficking?

Mr. Brodsky: No, I do not quarrel with the decision of the court and I do not appear here to say that judges are wrong in their interpretation. That is a decision for the court of appeal. You have heard testimony previously and today as to what happens if two or more get together and one of them has the drug, because it can only be had by one. This is an example in which it was pooled. It may be, first, that the judge felt that the material would be distributed to more than just the two and maybe six is a large number. The police chief who sat in this chair used the figure 10 and said that 10 people would now go to the United States, appearing at a duty-free port and split it up into little bits.

Senator McIlraith: The other two cases to which you made reference seemed to support your thesis as to the need for a better definition of trafficking, all a real commercial trafficker would need to do in order to escape the heavier punishment would be to organize all the drug users in the province in a club, or something, obtain drugs for them and, of course, he would not be guilty of trafficking.

Mr. Brodsky: I say, however, that any amendment to the legislation should define trafficking as vending, essentially. The police would probably say that most drug users are not a group anyway. Addicts, in any event, are a group by reason of the addiction. The fact that the material is sold within the group would still make it vending.

Senator McIlraith: It seems to me that citing the *Regina v. Taylor* case in addition to the other two indicates a weak

spot in your argument, because it is a conclusion that there was no trafficking. The point is valid, perhaps, in the other two cases, but not in *Regina v. Taylor*.

Mr. Brodsky: I might point out, if you wish, another case, Steven Zagozewski moved into Ontario carrying a large suitcase containing phencyclidine. He travelled from Kenora to Red Lake and was convicted of trafficking. They were not his drugs; he was not being paid for them; he was transporting them to someone else. He got six months.

Senator Neiman: I wanted to ask if the Canadian Bar Association reached any conclusion as to whether it approved of this change, of having summary conviction procedures as well as indictable offences?

Mr. Brodsky: I can only refer the Senator to the last page of the brief, page 27.

Senator Neiman: Did they reach any conclusion, or have you any personal opinion about the reverse onus?

Mr. Brodsky: I would commence by referring you to page 27, and then say that in my personal opinion there should be no reverse onus in connection with drug offences. A court should be entitled to draw from the amount of drug seized, the circumstances under which it was seized, the previous record of use of an accused person who appears before the court, his statement in court, and the testimony of witnesses, as to whether or not that person was intending to traffic or was in fact trafficking in that drug. I do not think an accused should be called upon to prove that he is innocent of the crime. Murder is just as heinous a crime as trafficking in marihuana, and we do not require a murderer to justify why he should not be convicted. The same thing with rape. We do not require an accused to prove why he should not be convicted, despite the statements which are made in the press.

Senator Neiman: There is one other question which comes up from time to time. Some comment has been made that we should not combine some of the offences set out in the proposed bill.

Mr. Brodsky: I would again refer the senator to page 27, and say that I do not know why we need an offence of cultivation. If a person possesses a little plant, or a little bigger plant, or a great huge plant, and he grows it himself, he is guilty of being in possession of that plant. If he had a whole field of it, you may assume that he wanted to traffic in it, and a judge might assume that also. That would be something which the court would take into consideration in determining what sentence should be imposed. I do not think you need, for the public, to demonstrate that a year later or five years later this fellow was not possessing this drug for the purpose of trafficking, that this was not a fellow who was trafficking; he was a fellow who was cultivating it, he was a farmer. I do not think you need that distinction. But, again, I would say that you should first look at page 27.

Senator Godfrey: On this question of onus, to prove that you are not trafficking, the law is that you do not have to prove beyond a reasonable doubt, so long as there is a balance of probabilities. Is there any precedent for having to raise a reasonable doubt in those circumstances?

Mr. Brodsky: Yes. The British Columbia Court of Appeal, in the decision of *Regina v. Silk*, determined that proof means proved beyond a reasonable doubt; that you can establish to the satisfaction of the court that you were

not in possession of the drug for the purpose of trafficking if you are able to raise a reasonable doubt.

That was considered to be the law for a while. The British Columbia Court of Appeal was in error, however, because another man, by the name of Appleby, was charged. His case went to the Supreme Court, and in that case, *Appleby*, they considered *Silk* and said that *Silk* was wrong, that the accused person does not have to raise a reasonable doubt. If that is all he does, he should be convicted. He has to satisfy the court by the balance of probabilities. It has to be more likely that he was not going to traffic in the drug than that he was.

The Chairman: You mean he has to prove it beyond a reasonable doubt?

Mr. Brodsky: No, on a balance of probabilities.

Senator Godfrey: We have a Court of Appeal decision on that. That is something we should consider.

Mr. Brodsky: Not only legislators misinterpret things.

Senator Godfrey: Perhaps you could give us the citation of *Regina v. Silk*.

Mr. Brodsky: Yes, I will forward that to the Chairman.

The Chairman: I want to thank you on behalf of the committee, Mr. Brodsky. I think all members of the committee will agree that this has been not only a very interesting brief but one of the most important we have heard.

The committee stands adjourned until Tuesday, April 29, at 11 a.m. The committee will meet at 11 a.m. and at 2 p.m. next Tuesday.

The committee adjourned.

APPENDIX "A"

A BRIEF BY
THE CANADIAN ASSOCIATION OF CHIEFS
OF POLICE
ON THE MATTER OF BILL S-19
OTTAWA, APRIL 22, 1975

A BRIEF BY THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE
ON THE MATTER OF BILL S-19
OTTAWA, APRIL 22, 1975
A SUMMARY

The following points highlight the in depth study of various aspects of the effect of Bill S-19 as seen from the law enforcement point of view.

INTRODUCTION: some statements made to this committee have proven to be erroneous (p. 1). Research reveals to a greater extent every day that marijuana is worse than originally thought (p. 2).

NATURE OF BILL S-19: a summary of the amendments and what they mean. Not only appears to liberalize drug, but actually does (p. 3).

APPARENT REASONS FOR CHANGE: pharmacological designation (p. 6). Previous legislation too severe for nature of drug - escape from realities and pressures (p. 7). Addiction not a factor (p. 8). Reasoning of consensual and victimless crime questionable.

EFFECT ON LAW ENFORCEMENT: Even under present law, juveniles are involved in trafficking (p. 10) but there will be even more under Bill S-19. Marijuana is part of the Cannabis family - some elements are very potent - these create dependencies. Five Winnipeg High Schools surveyed showed that youth relied on law and parents for guidance. Loss of either or both would be disastrous (p. 11) particularly for youths who want to avoid the sub-culture.

A CASE HISTORY: Users are non productive to society (p. 15). Toxic condition untraceable as cause of vehicle accidents and other crimes (p. 16). Agencies and proponent survey groups infiltrated by users. In Canada, one researcher was charged for possession but nevertheless became a worker on a Commission (p. 17). Cost of health services exorbitant. Alcohol alone runs well over \$200,000,000 per year for Ontario alone (p. 20).

CONCLUSIONS AND RECOMMENDATIONS: there is no evidence to show that it does any good (p. 22). Evidence increasingly argues against cannabis of any strength. Statistics showing decrease of possession offenses are misleading since they are related to priority of law enforcement activity against trafficking (p. 24).

A BRIEF BY THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE
ON THE MATTER OF BILL S - 19
OTTAWA, APRIL 22, 1975

The matter of drugs and narcotics has long been of great concern to the profession of law enforcement in Canada, and the Canadian Association of Chiefs of Police therefore greatly appreciates the invitation of the honorable Senator Neiman to appear before the Senate's Committee on Legal and Constitutional Affairs and impart our views on the provisions of Bill S-19 as it relates to present legislation on drugs and narcotics.

We have no quarrel with the removal of legislation covering cannabis from the Narcotics Control Act to the Food and Drug Act. However, this measure, together with the proposed provisions of Bill S-19, would appear to the general public, to condone the use of cannabis as there remains an erroneous belief that this drug is relatively harmless.

This Committee may have difficulty in reconciling the views of those who have appeared prior to this date claiming that the use of cannabis is relatively harmless with the views of others who claim that it is a dangerous drug.

We believe that there is increasing evidence that the latter is the case. One witness who appeared before this committee is reported to have said that since the laws of his state (Oregon) have removed marijuana from the statutes as an offense, there is less use thereof than ever before.

Since the time that this witness appeared before this Committee, it is reliably reported that the Oregon State Police have made a statement which indicates that there has been a 63% increase in all offenses related to marijuana in the last 9 months - and a projected 85% increase for a period of 1 year. In addition to the statement of the police, it is also reported that one Oregon District Attorney has said that not only

has use of marijuana increased but more younger people are now using the drug. "More kids are now trying to convince their parents and their younger pals since the police will not arrest. The new Oregon law has also led those youngsters to believe that the drug is harmless in spite of new evidence showing it to be harmful" said the District Attorney.

The witness from the State of Oregon that appeared before this Committee is reported to have stated that fewer people were using lesser amounts of the drug as a result of the new law. Such statements seriously warrant greater investigation before this Committee should accept them at face value.

In fact, Dr. D. Harvey Powelson in a recent article in Reader's Digest (Appendix A) refers to marijuana as "the most dangerous drug we have to contend with today (because) its early use is beguiling (and) its continued use leads to delusional thinking. "

We hardly need to introduce Doctors Kolansky and Moore, who have been quoted in other testimony presented to this Committee. It is generally recognized that California, like British Columbia, has probably been involved more than any other area with the matter of drugs. Chief Edward M. Davis of Los Angeles in an article appearing in the "Police Chief" magazine of March 1975 (Appendix B) quotes the above named Doctors in an article of the Journal of the American Medical Association where they conclude that "it is our impression that our study demonstrates the possibility that moderate to heavy use of marijuana in adolescents and young people without pre-disposition to psychotic illness may lead to ego decomposition ranging from mild ego disturbance to psychosis. "

we are conscious that the responsibilities of this Committee are very different to those of the LeDain Commission. However, we feel that in the light of the new evidence that has come forward since the Commission report was made public, it is dangerous to prepare legislation on the basis of the conclusions of the LeDain Commission report. It is for this reason that we are appending a number of articles indicating the type of new knowledge regarding cannabis.

We intend further to concentrate on the interrelationship between the provisions of Bill S-19 if they become law, and their effect on law enforcement both generally and specifically, and this, not by way of conjecture, surmise or hypothesis, but rather through established, recognizable, and accepted facts gathered through police experience.

1. NATURE OF BILL S-19:

In an effort to establish and ascertain common understanding on the nature of Bill S-19, we wish to set out what we understand are the changes suggested. These are the following:

1. Possession offence

In the case of simple possession, the Crown no longer has the choice of proceeding by summary conviction or by indictment whether or not the offense is a first offense or a subsequent offense, but must proceed by summary conviction only.

In the case of trafficking or possession for the purpose of trafficking, the Crown may elect to proceed by summary conviction or indictment, whereas previously under the Narcotic Control Act, the choice of summary conviction was not available.

2. Jail sentences and limits

The penalty of \$500.00 or up to three months in jail in default thereof for first offense replaces the penalty of \$1,000.00 or six months in jail, or both, under Section 3 of the Narcotics Control Act.

However, under Section 3(2) of the Narcotics Control Act, the Crown has the alternative of proceeding with a charge of simple possession of marijuana either by summary conviction or indictment. Under the proposed legislation, regardless of the number of subsequent convictions, the offender is only liable on summary conviction.

tion to a fine of not more than \$1,000.00 and in default thereof to a term of imprisonment of not more than six months.

It is our understanding of the proposed legislation, that in the matter of soft drugs under the proposed Part V of the Food & Drug Act, the possession of cannabis only, would provide for a subsequent offense under Section 48(3). It is our opinion that convictions for abuse of restricted and controlled drugs under the Food and Drug Act should form the basis of a subsequent offense under this part.

While we appreciate the purpose of omitting minimum sentences in cases of simple possession, we submit that in accordance with our suggestions to the effect that subsequent offenses be proceeded with at the option of the Crown by way of summary conviction or by indictment, efficient enforcement requires a minimum penalty if the procedure in such cases is by way of indictment.

We believe that the Crown should have a procedural option in such instances which are dealt with in more detail in our recommendations.

3. Trafficking penalties

While we agree with the procedural option given the Crown under the proposed amendments, we feel that the legislation providing a penalty for trafficking should include a minimum penalty whether the charge is proceeded with by way of summary conviction or by indictment.

4. Possession for the purpose of trafficking

In the light of our previous statement, it is felt that the penalty for this particular offense which is similar to that referred to immediately above, should also include a minimum penalty whether the procedure is by way of summary conviction or by indictment.

We foresee that if the proposed penalties for trafficking and possession for the purpose of trafficking as proposed in Bill S-19 remain as suggested, persons convicted for trafficking even in hashish or synthetic tetrahydrocannabinol might well escape any punishment at all by way of absolute discharge.

It is our understanding that representations have been made to this Committee to omit from the new legislation any onus upon an accused found guilty of a possession, to prove that such possession was not for the purpose of trafficking.

Police experience has shown that when amounts of liquor, for example, or drugs, are found in extreme amounts in the possession of individuals, they are invariably in their possession for the purpose of trafficking.

It is therefore our strong view that provisions placing the onus of proof on the accused should form part of the proposed legislation.

5. Importing for own use - Section 50(2)(b)(ii)

We are of the opinion that the provisions of this sub-section in relation to the accused being required to prove that imported cannabis was for his own consumption should be omitted from the legislation. This is a specific recommendation at the conclusion of our Brief.

The provisions of this Section for procedure by way of summary conviction is a method whereby the

Crown can proceed as leniently as possible where there is reason to believe that the facts show importation is for the personal consumption of the accused person.

In such cases, we believe that there should be a minimum penalty when the procedure has been by way of summary conviction.

The difficulty in such cases is proving those amounts which can be considered as reasonable for personal consumption. Another factor to be considered is that a group of offenders can import relatively small amounts for a trafficker and this alone could defeat the purpose of this legislation.

6. Other changes

Other areas of changes deal with penalties for cultivation, which follow the general trend of amendments, and deal principally with procedures of enforcement. These will be dealt with in this submission in the manner that these changes affect law enforcement operations.

2. APPARENT REASONS FOR CHANGES:

Although comparison between the use of alcohol and cannabis is inevitable, we believe that such a comparison is unfortunate. The efforts of society today should be to ensure that the use of cannabis does not inflict upon our society those conditions that have arisen by the use of alcohol.

This area of our Brief will no doubt give rise to some discussion inasmuch as with the best intent possible of staying within the bounds of Bill S-19 we must touch on matters which go beyond simply because they affect law enforcement operations in general.

We understand that the reasons for the proposed changes being primarily because the substance cannabis is not, in terms of pharmacology, a narcotic. This is the position taken by the honorable Minister of

National Health and Welfare and is entirely acceptable inasmuch as under either legislation, penalties of varying degrees can nevertheless be imposed. This first reason for the change therefore, we consider as being minor and simply one of semantics because, whether a substance is a drug or a narcotic, and we would submit that the French word "stupéfiant" is a much more appropriate designation.

It would appear that another reason advanced for the amendments is that the penalties under the Narcotics Control Act are too excessive for the nature of the substance and its effect. With the honorable Members' indulgence we will review very briefly indeed, since we intend to avoid duplicating technical presentations made to you previously, those ramifications starting with the better known soft drugs on to the hard drugs or narcotics.

The Honorable Mr. Lalonde maintains that "There is no solid proof that the use of marijuana automatically leads to heroin. Consequently any comparison of these two drugs is not in the spirit of this Bill". We would readily stipulate that if this were so, Mr. Lalonde's comment would be entirely accurate. We have even stated at the beginning of this presentation that Bill S-19 per se would suffer no question were it not for its ramifications in other areas, and this is one of them.

We continue to make the statement that virtually all hard drug addicts started with the so-called soft drugs, including LSD, amphetamines, and metamphetamines. An R.C.M.P. study has moreover shown that cannabis led the way.

We clearly understand that not all persons who use soft drugs become hard drug addicts but a significant percentage of such persons do so. As alcohol leads to a certain percentage of users in becoming alcoholics so does a certain percentage of cannabis users become chronic heavy users.

We particularly deplore the analogy that for the most part, the alcohol user levels off at a certain pattern of use, and is not invariably driven to drink more and more. In fact the alcoholic does not necessarily switch to more potent drugs but he unquestionably becomes considerably more dependent on the same drug.

Insofar as Bill S-19 appears to condone the use of cannabis, as we mentioned before, we submit that the spirit of the Bill, should it become law, will open the door to greater drug problems.

Another reason advanced by some in justifying a more lenient law is that the person using cannabis is hurting only himself. At one time people said the same thing about alcohol yet, how this attitude has changed in recent years. In various ways, cannabis users become a problem and even a menace to society. Police experience has shown that use of cannabis per se created crime within the community even involving juveniles of the ages of 8 and 10 and that in fact there is no such thing as victimless crime.

We are concerned that the tenor of the proposed legislation is such that while possession is looked upon as a rather innocuous offense it appears to be overlooked that this interpretation can only lead to greater trafficking in all its aspects. This view refers particularly to those who say that tempering present legislation will remove an attractive and clandestine market. The principle of supply and demand speaks for itself.

Underlying our opinions and views on drug legislation is the fact that wherever cannabis has been used throughout the world with relatively little control, the authorities are now imposing stricter measures and heavier punishment in order to curtail the obvious damage inflicted upon their social structure.

In some of these societies such as Indonesia and Japan, the authorities are now even resorting to capital punishment and extreme police powers. It occurs to our Association that a reasonably strict law at this time will enable Canadian authorities to avoid these extreme measures in the future.

Because of the nature of cannabis, and its effect upon people, it takes time to recognize the impact that its abuse has on society. It is our opinion now, hearing from experts in England, the United States and Canada about the new found dangers in cannabis, that there should not be, as some have suggested, a trial period for a more lenient law. Similarly it is a part of our opinion that Bill S-19 needs to be more strict than as presently suggested. We are impressed by the fact that Doctor Powelson, a former proselytizer for the use of cannabis now refers to it as a "most dangerous drug". He is not alone in this category.

In order to evaluate thoroughly the changes that are being sought through Bill S-19, we must therefore ask ourselves the question as to whether or not the use of cannabis is a law enforcement problem.

As in the case of any controversial matter in the social order, there will be opponents and proponents who can virtually quote chapter and verse in equal proportions in order to support their stand. We find ourselves in the particular position of simply having to relate experience and as we have stated on other occasions, if our comments are set aside we shall continue nevertheless to enforce the law of the land. Unfortunately when such laws fail it is often the police who are blamed and needless to say, this has an adverse effect on the morale and efficiency of law enforcement officers and procedures. This would then seem to be an invitation to the police to accept more flexibility and with which we could agree were it not for the aforementioned attending problems which we would now like to analyse.

3. EFFECT ON LAW ENFORCEMENT OPERATIONS:

Quite apart from statistics, analyses of social trends or any other arbitrary medium, police experience shows that the supposedly harmless cannabis is being peddled increasingly not only in the universities, or colleges, or high schools, or even the intermediate

schools, but even in elementary schools. At that age level we should normally encounter no problems either from alcohol or drugs. It is a known fact that where, heretofore we had no teen-age or even pre-teen alcoholics, these now do exist. There is also an alarming increase in the number of cases of solvent addiction in children. We submit that this is largely the result of our present permissive society.

Even without any relaxation of the present legislation under the Narcotics Control Act, the police are finding that there is extensive juvenile involvement in drugs even to the extent of trafficking. How much more likely are we to find an increase in the use and trafficking of cannabis if a relatively lenient law as is proposed in Bill S-19 is enacted. It is rather ironic that such a law is likely to be enacted when persons who formerly thought that cannabis was a harmless substance and are now, on the basis of experience and knowledge, referring to it as a "most dangerous drug".

This brief has been predicated on the fact that we do not believe that it is necessary in this presentation to go through the gamut of a chemical analysis of various forms of cannabis. Previous presentations have done so and your own interest has no doubt led you to consult many authorities. However, we would like to say that where cannabis is concerned, the very natural desire of experimenting can and does lead to the search for stronger kicks through the known variations in the strengths of different forms of cannabis. Though this does not apply to all juveniles there is a constantly growing subculture among them which eventually will present a very serious set of social problems.

As a result of this, law enforcement is faced with such crimes as theft, intimidation and a range of other crimes usually attributed to adults ranging from prostitution (male and female) to outright violence.

Any leniency in present legislation even though this legislation intrinsically may be acceptable and operable will have this side effect of conditioning youth to recognize such practices as acceptable particularly in the light of relatively harmless sentences or legal sanctions.

It has often been stated that one of the major reasons for a levelling off process in some of the soft drugs, and particularly cannabis, is that to proceed with another type of drug, producing a greater kick, involves the use of a needle and the fear thereof is a deterrent factor.

This argument is hard to reconcile with the fact that the number of hard drug users, involving the needle, is constantly growing and that the very great majority are known to have started at the bottom of the ladder - without the needle.

It is among the adult users of cannabis that the problem is most serious since as individuals, as parents, as professionals in society, they not only set the example as to the proper way of doing things in various fields of activities but also set standards which directly affect the moral fiber of the community. The police have been criticized for not enforcing the law when cannabis is used by the more affluent members of society. It has been suggested that because the police are not effective in the enforcement of the law within this strata of society, that the law relating to cannabis should be repealed entirely. There are many other crimes in which the police are able to enforce the law only in a relatively small number of offenses. But this is certainly no reason why all such laws should be repealed. The specific difficulty in enforcing cannabis laws in the higher levels of society is because such offenses are committed within the relatively secret confines of homes. Unless the police have information on which they can base police action,

there is no way in which this form of activity can be brought before the courts.

Our Association submits that in the absence of other deterrents in the use of such drugs, law enforcement is still the only hope of keeping drug abuse under control. Police authorities in Canada are concerned that this proposed legislation will increase trafficking in cannabis due to the aforementioned statement that relatively lenient legislation as now proposed, can only increase its use.

We agree with Doctor Morrison when he states that the trafficker is the major influence in the spreading of cannabis usage throughout society.

The trafficking in cannabis has changed remarkably over the last three or four years, and we no longer have the amateur type of operation conducted by college students for themselves and their friends. We now have highly organized and highly professional criminal gangs with connections around the world and who cater to all levels of society.

We believe that such gangs will continue to operate even more actively and will be looking for ways to take advantage of Section 50(2)(b)(ii) of the proposed legislation in an effort to defeat the purpose of this legislation and create an even more lucrative business both among adults and the juvenile sub-culture with a minimum of risk to all.

This section alone dealing with "importation for own use" is what we in law enforcement believe the traffickers will effectively put to their own use should it become law. Recruiting will now take place to have users and non users import relatively small amounts of cannabis in Canada. The amounts that they will import will be related

to those amounts that they can claim, if caught by the police, to be for their personal use. The hard drug addict population of this country will form a ready recruiting base for such activity whether they used this form of drug or not.

Theoretically the proposed legislation looks reasonable but so did the Bail Reform Act. It is submitted that the light penalty provisions within the proposed legislation will eventually create more problems than they solve and society will be left with a drug situation which this Committee, through this legislation, is trying to avoid.

In submitting this Brief we have tried to bring before you, on the basis of practical experience, the problems that we see facing society if the Bill is proceeded with in its present form.

4. A CASE HISTORY:

To this point, police experience has been the basis of this Brief insofar as generalities are concerned. However, we not only rely on first hand experience of police personnel but also on that of special advisors through consultation. The Law Amendments Committee would now like to submit the personal experience of such a consultant, Mr. André McNicoll.

Over the past several months I have had published a number of articles and have also appeared on radio and television for the purpose of generating a more realistic appraisal of cannabis. What I have been writing and talking about is my personal experience with marijuana and hashish over a period of five and half years.

A Journey Into Madness

I was introduced to the delights of smoking cannabis in late October, 1968, approximately two weeks after my marriage and, perhaps symbolically, shortly before undertaking a research assignment with the Canadian Mental Health Association. This initiation took place

after much prodding from a well-intentioned friend who thought me much too straight and therefore missing out on this exciting new experience.

The smoking experience was repeated infrequently during the following several weeks. Nonetheless, almost imperceptibly my social and personal life was transformed. In my conversations I began to casually allude to the benefits of this obviously innocuous drug, scold those who were not so adventurous, and take ever greater pride of this daring behaviour. Like so much excess baggage my past slipped away as I saw less of my family, old friends, and colleagues. My attitude towards many things changed—my traditional beliefs being replaced by an enthusiastic orientation towards the values of spontaneity, impulse, and behaviour, free of the restrictions of conventional society. Within eight months I was smoking cannabis, not once a week, but five times a week, had tried other drugs such as M.D.A. and L.S.D., and my home had become a hippy commune. The stage had been well prepared for the next phase of my drug experience.

This phase was somewhat delayed when, in July 1969, my wife and I, in what had now become a fragile relationship, left for England. But, eventually, we made new friends, all of them drug users, since non drug-users were evidently unsuitable companions, and in October I began one year of post-graduate work. During that year I became a marijuanic. I smoked cannabis daily, sometimes several times a day and turned to it for the relief of all anxiety and pressure. The fact that I managed to graduate (only after great effort) is of no particular significance. During my stay in England and intimately associated with my chronic heavy use of cannabis (a pattern of consumption shared by all around me), I became totally committed to a lifestyle that, only a few months before, my training in physical and mental health had told me was pathological. I ran a commune whose existence centered on drug use, I administered chemicals such as L.S.D. to psychiatrically-disturbed individuals, and along with some of the most prominent social scientists in the United Kingdom enthusiastically advocated the values of this New Culture.

Albeit, unknown to me, and apparently to anyone else around me, presumably because the same thing was happening to them, I was slowly losing my mind. Some of my closest friends, equally zealous proselytizers of the joys of chemical relief, were highly qualified psychiatrists and psychologists. Naturally my marriage broke down and along with it my last attachment to a conventional life. But alas I was finally free to let it all hang out, take all the drugs I wanted. And I did.

Over the next three years I wandered through 17 countries, meeting thousands of drug users, especially in Asia. There they existed off the profits of trafficking, petty thievery, and prostitution. In Asia, where over-the-counter purchases of morphine had attracted great hordes of Western hippies cannabis was not obsolete, but merely a pleasant beginning to a day's drug taking. For months, in every major city from Istanbul to Delhi, I shared cheap hotel rooms with countless youths as they smoked enormous quantities of hashish and fixed opium and morphine into their veins as often as five times a day. Most were suffering from malnutrition, hepatitis, and paranoia. Some died. That experience will always remain as one of the most depressing of my life.

During that Asian summer, of 1971, I took up the practice of prolonged meditation usually, of course, bolstered by my favorite chemicals. In time, as could easily have been predicted, I became convinced of a messianic mission the purpose of which was nothing less than the transformation of human consciousness. It proved difficult to pursue this mission however, since I soon encountered several other gurus whose visions were even more grandiose. Eventually I settled, on and off, on a farm commune and became a famous artist and craftsman. On the farm, along with a continuously shifting group, I smoked mainly marijuana, from our very own garden, and became completely alienated. The culture did not permit of news-

papers, radio or television. Serious books and intellectual pursuits were also regarded with suspicion. A diet of Tarot cards, the I Ching, and endless drugged vigils were more than even I could take. And here, I believe began an awareness, after four years, that drug taking and its lifestyle were very destructive.

In a desperate and highly confused attempt at changing my life I borrowed a friend's uninsured automobile and drove to Montreal. Very unfortunately, I smoked some potent hashish with a former heroin addict now quite proud of his mere dependance, both psychological and financial, on this harmless substance. I resumed my motoring, totally absorbed by a brand new vision, and promptly crashed into two parked automobiles where I was extremely fortunate in not killing several people.

After my trial, I returned to Ottawa where a kind friend gave me some LSD. The LSD trip proved equally eventful after some rather bizarre behaviour and I was arrested by the Police and taken to a mental hospital, the same institution incidentally where I had once been employed as a counselling therapist. While I was in that institution my parents were interviewed by the psychiatrist assigned to my care. He asked them what could possibly be causing me to be ill. They told him it was because I was using drugs. This wise man replied: "Oh no, they're only soft drugs". I was discharged within two weeks, not one single word having been said about my drug taking. Had I been told then, and it is inconceivable that I wasn't, about the dangers of drug use, chances are that I would not have continued to suffer for a further six months. It took another two painful journeys across Canada and Europe, more drugs, another hospitalization, and near suicide before it somehow dawned on me that I must be doing something terribly wrong.

I hope that this brief narrative at least partly conveys the extent of the suffering that was involved in my using cannabis for five and half years. Not only did I suffer personally but so did many people close to me and from the beginning of this painful adventure to its ter-

mination. Mine is not a unique story, far from it, it is typical of a journey into confusion, alienation, and eventually madness, that has been true for thousands.

I am now quite convinced that cannabis, though chemically less potent than other hallucinogens such as L.S.D. , is the drug par excellence of the disaffected. It is used repeatedly and therefore it can rarely be viewed with a non-drugged mind, and its effect is subtle and pernicious as the user is drawn by a false impression of well-being into the misguided reassurance of harmlessness.

Moving away from drug use and its lifestyle has been extremely difficult. My success has been due largely to the kindness of my family, a few understanding friends, and personal discipline. Sadly, It has not been due in the main to the availability of sound advice from the helping professions. When I was recently a guest on a radio talk show a mother phoned in asking where she might turn for help for her son who had become a habitué of hashish and whose behaviour clearly indicated serious problems. I reluctantly concluded that she should not turn to the public agencies but rather to private sources. It is an inescapable fact that public agencies have been infiltrated by drug users and by an unwarranted permissive attitude towards drug taking which has rendered largely ineffective, if not actually destructive, the guidance they might provide. There are reported cases where therapists in these public agencies have been even more deranged than their clients. I myself know several therapists in psychiatric institutions who are regular users of cannabis and, on the basis of my personal experience, know this to be gravely detrimental to the people they serve. This extremely regrettable state of affairs has come about from an uncritical acceptance of the propaganda favourable to the use of cannabis. The medical profession itself, once a staunch force against the use of this drug, has become a victim of the accompanying philosophy which sees the solution to human and social problems as requiring the removal of controls over behaviour rather than the providing of sound guidelines.

Areas of concern

On the basis then of my personal experience with cannabis and the drug counter-culture and of my training as a medical sociologist I would now like to comment on three specific points as regards Bill S-19.

The first point concerns the medical and scientific evidence on the consequences of cannabis use. There is no question that the most important single dynamic accounting for the phenomenal rapidity with which cannabis swept through the ranks of adolescence like a plague was the belief that this substance did not cause either psychological or physical dependance nor medical problems of any kind. This position is no longer tenable, yet it persists. In the past five years, with the refinement of appropriate research methodologies, there has been a very dramatic shift in the evidence available to us. This evidence, on some points is unanimous: for example, the repeated use of cannabis causes a sore throat, bronchial irritation, and a general diminution of pulmonary function. It also appears likely that cannabis is a potent carcinogenic agent. In other areas of investigation, though the findings are becoming quite consistent, some suspicion remains: for example, the repeated use of cannabis causes severe impairment in the synthesis of D.N.A.; chromosome breakage; interference in the body's immunity system; sterility, impotence and gynecomastia. In yet other areas, where the findings are the most frightening, there is considerable controversy: for example, the repeated use of cannabis may cause irreversible brain damage.

Appendix "C" is a comprehensive summary published in Science. This evidence, and this is important, is not known to the general public therefore public opinion cannot now be brought to bear upon official agencies. This evidence, and this is equally important, is not even well known in the medical profession. This is not an unusual situation and certainly is not to be taken as evidence that the recent findings are too flimsy to deserve the most

serious consideration. One should remember that it took several years for the substantial evidence that tobacco smoking is injurious to health to be accepted by an extremely resistant public and health profession. It would seem therefore that time will play an important part in determining future social policies on cannabis. But at the present time I consider it irresponsible to shape policy on the basis that insufficient medical evidence exists that cannabis is dangerous and therefore controls should be liberalized. It seems to me that since we are beginning to uncover serious consequences we should move most cautiously before we collaborate in allowing yet another dependency to take root. Ours is hardly a society in desperate need of another chemical crutch.

The second point on which I would like to comment is the controversy surrounding the function of legal deterrence. To argue that the law does not act as a deterrent one would have to demonstrate that legal controls have no effect on behaviour in either direction. For example, alcohol consumption would not be affected in either way were controls removed. The evidence is quite the contrary. It is a known fact that there was a marked decline (40%) in the incidence rate of cirrhosis of the liver in the United States during Prohibition. It is also known that cirrhosis of the liver is the most valid indicator of alcoholism available to us, that alcoholism is a function of the general level of alcohol consumption, and that consumption is intimately tied to availability. There is absolutely no question that if the laws that presently control cannabis were removed that this there would be an increase in the use of that drug - particularly by young people. The removal of legal controls acts as a catalyst whereby every level of consumption increases whereas the institution of legal controls has a reverse effect. In this country it is not yet possible to say where heavy and casual levels of cannabis consumption might reach, but on the basis of the rapidity with which this drug was introduced and also on the basis of our high level of physical comfort which

permits the luxury of drug use, I think it would be extraordinarily high. The argument against the use of the law seems to be closely related to the epidemic proportions of drug use in our society and consequently in an attitude which would have us indulge ever more liberally in chemicals. Approximately fifteen years ago cannabis was found almost exclusively in bohemian cliques but the latest findings from a survey in Gshawa indicate that fully 16% of students and industrial workers under the age of 26 are regular users of cannabis. The vast majority of these youthful cannabis users are multiple drug users. It should be noted that in the past few years there has been a marked and tragic increase in the number of adolescent suicides and in Australia it has been found that 87% of such suicides were related to drug use. How we are to deal with such a grave situation without meaningful laws, as has been suggested to this Committee by several legal groups, is totally beyond me. The fact that many people now use cannabis on a habit basis is not necessarily indicative of an ineffectual or anachronistic law. Rather, it is more a function of an aberration of values now inclined to sensuous and chemical experimentation through the lure of total liberation from all anxiety. A few years ago when this cultural and drug revolution descended on us we were accused of lacking moral strength. I am sympathetic to this view and therefore feel it is wise to have laws that will reflect and maintain values essential to order, stability, and growth. I would not hesitate to legislate preventive measures in the area of personal behaviour. As a medical sociologist and as a Canadian I am concerned that a permissive attitude towards drug abuse will put serious strains on the resources allocated to medical care. We have uncovered an alcoholism problem of staggering proportions and incalculable costs, and this when only 5 - 8% of alcohol users are hazardous drinkers. What proportion of marijuana users will become medical problems? My conservative estimate is 20%. There is no way that our highly valued medical care system can withstand a problem of these dimensions. The fact is we cannot afford to be permissive or indulgent about drug abuse.

The third point on which I would like to comment is the notion of individual responsibility as against social responsibility. Over the past few years the concept of "wise personal choice to use or not to use" has gained much popularity. This concept seems to have originated with the personnel of public agencies, often drug users themselves, concerned with drug abuse. While this argument appears to have merit it is really quite shallow. To be free to choose which school to attend, or which country to visit on a holiday, is indeed a highly desirable situation.

But to be free to decide which chemical crutch to use does not belong either in the realm of logic or of human charity. The fact is that behaviour which is clearly injurious to the individual is also behaviour which is injurious to others. The idea that the law has no business interfering with personal behaviour is most laudable only if that behaviour does not constitute a threat to society.

Friends doing each other the extremely dubious favour of "turning each other on" are not engaging in private behaviour. Therefore the passing of a joint of cannabis by one person to another is essentially a social act and in this situation the law must establish the primacy of the social dimension over the individual dimension.

I consider it imperative that if Bill S-19 is to prevent the acculturation of cannabis that the giving and sharing of cannabis among friends constitute an offense. The proponents of legalization are inclined to draw an extremely sentimental picture of a group of peaceful adolescents engaged in the harmless ritual of passing joints of cannabis. From my personal experience and also because I am a sociologist I am particularly aware that the widespread use of cannabis is largely a function of such small

and then larger groups which have a powerful brainwashing effect on individuals. We must not be duped into and reconstructing the drug sub-culture as benign. The law must make it quite clear that to seduce another person into using this substance is a serious offense.

While I am in favour of the removal of cannabis from the Narcotic Control Act, I am gravely concerned about the thinking which has motivated Bill S-19. The introduction of cannabis in our society has reached a second phase which is linked to what is sometimes called "the curse of fashion". The drug is now being used by older, more respectable, and more casual users. These new converts, like the adolescents of the decade past, are, of course, convinced that cannabis is innocuous and therefore desire controls to be removed, and these good intentions have motivated new legislation. There is then a widespread lingering belief that cannabis is harmless and Bill S-19, of necessity, will be interpreted as evidence for this erroneous assumption. It is therefore vital that the implementation of Bill S-19 be preceded by a comprehensive and concerted program of public education aimed at making the general public, and more particularly those vulnerable sectors of the public aware that:

- 1) intoxication through any substance is obnoxious, undesirable and unhealthy behaviour; 2) the use of cannabis is tied to serious consequences subject to increasing medical substantiation; and,
- 3) the use of cannabis constitutes a punishable offense.

5. CONCLUSIONS AND RECOMMENDATIONS:

Such personal experience and evidence is the basis of our position against the so called "softest" of drugs. How overwhelming must the evidence be in order to refute the presentations and the convictions of those who have not suffered the practical experience but base their conclusions on the exception and theory.

We would also stress of course the views of Doctors Schwartz of the University of British Columbia and Malcolm formerly of the Ontario Addiction and Research Foundation whom we understand have appeared before this Committee. We would also recommend the comments of Dr. Edward R. Bloomquist in his book titled "Marijuana - The Second Trip" and to other authors such as John B. Williams, "Narcotics and Drug Dependents" or Richard Blum in his "Drug Dealers - Taking Action", as well as the attachments to our Brief.

We conclude that the lack of minimum penalties in the proposed legislation is a serious omission and affects seriously any effective deterrence and the problem of resolving the execution of warrants issued in default of payment of fines.

Therefore we make the strongest recommendation that minimum penalties be provided in every case other than for a first offense for mere and simple possession of marijuana.

With reference to Section 48(3), (simple possession of cannabis) discusses earlier, we recommend that under the proposed legislation, the Crown should have the option of proceeding by way of summary conviction or by indictment in the matter of subsequent offenses with appropriate penalties established accordingly.

We also recommend that convictions respecting restricted and controlled drugs under the Food and Drug Act form the basis of subsequent offenses and that Section 48(3) be amended accordingly.

In the light of our earlier remarks concerning Section 50(2)(b)(ii) lines 38 to 42 inclusive should be deleted. We believe that if these lines are deleted, sufficient protection is given the offender because the Crown prosecutor has the option of proceeding

by way of summary conviction should he believe that the circumstances under which drugs are found as well as the quantity of drugs, and in the absence of any previous drug conviction, are such as to warrant summary conviction.

It is the opinion of this Association that Bill S-19 by failing to distinguish between the different forms of cannabis contributes to the confusion that surrounds this drug.

In conclusion, there is sufficient new evidence concerning cannabis which indicates that there are dangers in its use that were heretofore unknown but which, as a result of increasing research, are now beginning to surface. To create too lenient a law and not seriously discourage the use of these drugs at this time, will prevent our society from receiving the benefits of such research. It has been maintained by some that the present legislation is in fact not a liberalization of the drug laws, but when Bill S-19 is viewed in the context of its effect on society and incidently law enforcement, the possibilities of drug abuse as well as implications offered through reduced penalties it is reasonable to conclude that indeed there is a liberalization whether or not this is the intention of this legislation.

We believe that with the dangers implied by medical authorities who have supported the opinion that cannabis is a dangerous drug, it is important to convey to society, through a reasonably strict law, that the use of drugs is something to be avoided. May we therefore respectfully suggest that this Committee, by maintaining a more severe attitude towards the use of cannabis, can provide legislation which can give society the guidance that it needs in the matter of this dangerous drug.

We submit this Brief knowing that the legislation that might result from the deliberations of this Committee could in turn result

in Canada becoming either a drug oriented society or one that is relatively free from drug abuse.

The Association once again reiterates its appreciation with the opportunity of presenting its views collectively and individually and trusts that the comments made will commend themselves to your attention.

APPENDIX "B"

BRIEF PRESENTED TO THE SENATE COMMITTEE ON LEGAL
AND CONSTITUTIONAL AFFAIRSBY
THE CANADIAN BAR ASSOCIATIONMr. Chairman, honourable members

The Canadian Bar Association is pleased to have been given the opportunity to make some observations with respect to Bill S-19. We have followed with interest the testimony of the various witnesses who have appeared before this committee of the senate, and we have heard the term "decriminalization" frequently alluded to in relation to Bill S-19, and in particular with respect to the offence of simple possession of cannabis. We would like to direct this committee's attention to the legal implications of some of the terms that you have been referred to, in particular the concept of "legalisation" of cannabis, as opposed to the concept of "decriminalization" of the present offences involving simple possession of this substance and its derivatives.

"Legalisation" is generally understood to mean the abolition of all penalties with respect to the possession or use of cannabis. "Legalisation" as a concept in some of the presentations made to this Honourable Committee also includes the concept of "legal sale" subject to suitable government controls. If cannabis were "legalised" only those sales in violation of the government controls would incur a penalty. A system similar to our present Liquor Control Law is envisaged.

Canada is presently a signatory to the Single Convention on Narcotic Drugs 1961. The Le Dain Commission reviewed this convention to ascertain Canada's international position on the question of legalisation. The commission concluded that Canada was not in a position to legalise possession of cannabis, cannabis resin (hashish), extracts or tinctures of cannabis. At page 210 of the Le Dain Commission Report, the following remarks were made with respect to Article 36, paragraph 1, of the Single Convention:

"Article 36, paragraph 1, requires certain kinds of conduct to be made punishable offences as follows:

1. Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that the cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

Thus, as long as Canada is a party to the Single Convention, it is obliged to make the above conduct with respect to cannabis, cannabis resin, and extracts and tinctures of cannabis, a punishable offence."

Some doubt was expressed as to whether the Convention precluded Canada from legalising possession of the cannabis leaf, for the leaf is excluded from the definition of cannabis. (1)

T.H.C. which is the principal active constituent in cannabis preparations, is not governed by the Single Convention on Narcotic Drugs, but by the Convention on Psychotropic Substances 1971 (to which Canada is not yet bound).

By virtue of Article 36, paragraph 1 of the Single Convention on Narcotic Drugs, Canada is bound to make a number of activities vis-a-vis cannabis (including possession, sale, distribution, importing, exporting and cultivation) punishable offences. Furthermore, with respect to the "serious offences", adequate punishment in particular imprisonment is required by the Convention. The use of the term "serious" in this article is not defined.

As an alternative to "legalising" cannabis, much has been said about "decriminalizing" the offence of simple possession. Unfortunately, the term "decriminalization" has not been used consistently, and a number of definitions have been proffered. It has been used to mean:

- (a) the transfer of cannabis related offences from the Narcotic Control Act to the Food and Drugs Act
- (b) making simple possession of cannabis and its derivatives a "non-criminal" offence
- (c) removal of the stigma which results from a conviction being entered

- (d) removing the provisions for incarceration with respect to the offence of simple possession of cannabis
- (e) removing all penalties for simple possession of cannabis, but retaining the penalties for trafficking and related offences.

It is the submission of the Canadian Bar Association that there be one definition to be used in respect of the term "decriminalization". For the purpose of this brief, when the term "decriminalization" is used, it is meant the removal of the stigma which follows from a conviction for possession of cannabis, as well as removal of the provisions for incarceration for persons so convicted. Bill S-19 accomplishes the latter, but does not deal with the former. Bill S-19 eliminates the possibility of incarceration for those persons convicted of the offence of simple possession of cannabis, except in default of payment of a fine. In terms of the maximum fine which may be imposed, a distinction is made between first and subsequent offenders. Presently, under the Narcotic Control Act the offence of simple possession of cannabis could be prosecuted by summary conviction, or by indictment. Bill S-19 provides that all prosecutions for simple possession shall be by summary conviction only. Furthermore, Bill S-19 reduces the maximum possible fines which may be imposed for simple possession of cannabis. Under the Narcotic Control Act as it now stands, a person convicted of simple possession when the prosecution is by way of summary conviction, is liable for a first offence to a fine of one

thousand dollars or to imprisonment for six months, or both; and for a subsequent offence to a fine of two thousand dollars or to imprisonment for one year, or to both a fine and imprisonment. Bill S-19 in addition to deleting the incarceration provisions, provides that the maximum fine for a first offence is five hundred dollars and for a subsequent offence, one thousand dollars. Furthermore, Section 48 of Bill S-19 stipulates the default time which must be served for non-payment of a fine.

Although transferring cannabis from the Narcotic Control Act to the Food and Drugs Act may be more consistent with the pharmacological facts relating to this chemical, it does not alter the criminal nature of the offence and the record which follows. The Le Dain Commission in its report made this very clear. At page 213 of the report, the Commission had this to say:

"Both the Narcotic Control Act and the Food and Drugs Act create criminal offences. There is no essential difference between them in this respect. The maximum penalties for offences under the Food and Drugs Act are less severe than those under the Narcotic Control Act, and there is a greater opportunity to proceed by summary conviction rather than indictment but the effect of conviction under the two statutes is the same. There was a misapprehension in the course of our inquiry that conviction under the Food and Drugs Act was somehow not as serious as conviction under the Narcotic Control Act. This impression may have resulted from the fact that the Food and Drugs Act appears to be more of a regulatory than a criminal law statute. It regulates a whole range of food and drugs by a system of standards, inspection, and,

in some cases, licensing. At the same time, however, it prohibits unauthorized distribution and possession of certain substances with penal consequences. The same is essentially true of the Narcotic Control Act. Both statutes are cast mainly in the form of prohibitions--no doubt to emphasize their criminal law character--and the licensing regulations made under them indicate the scope and conditions of permitted conduct."

The Courts have also held that legislation prohibiting the possession of drugs in particular, legislation prohibiting the possession of LSD and marijuana, is legislation creating a "criminal offence". In 1967, the British Columbia Legislature passed a statute prohibiting the possession of LSD and marijuana. In Regina v. Simpson, Mack and Lewis, the British Columbia
(2)
Court of Appeal held that such legislation was an invasion of the federal criminal law power and as such was beyond the constitutional jurisdiction of the British Columbia Legislature. In delivering the judgment of the British Columbia Court of Appeal, Justice MacLean said:

"The prohibition against the substance marijuana is a clear invasion of the field of criminal law as contained in the Narcotic Control Act. In my view the fact that the prohibition against the possession of LSD is linked with the prohibition against marijuana in a statute passed at the same session of the Legislature as the legislation impugned affords a basis for a conclusion that the prohibition against LSD is also an invasion of the field of criminal law."

(3)

A conviction for simple possession of cannabis pursuant to Bill S-19 still remains a criminal conviction in a very real sense. It does not "decriminalize" this offence. Unless the court grants an absolute or a conditional discharge pursuant to Section 662 of the Criminal Code, or unless a pardon is granted pursuant to the Criminal Records Act of Canada by the Governor in Council acting on the advice of the National Parole Board, the person convicted will suffer all of the handicaps of a criminal record.

By virtue of Section 52 of Bill S-19, it is well to note that a person on being arrested is subject to compulsory fingerprinting pursuant to the Identification of Criminals Act, even though this latter statute generally has no application to summary conviction offences. A similar provision does not exist with respect to the summary conviction offences in the Narcotic Control Act and the Food and Drugs Act as they now stand. Perhaps the need for fingerprinting can only be eliminated if the distinction between first and subsequent offenders is done away with.

It should be noted that many provincial statutes make provision for higher penalties for subsequent offenders, and fingerprints are neither taken nor needed to differentiate between the first offender and the repeater.

Although Bill S-19 does not "decriminalize" the offence of simple possession of cannabis, in view of the record still following a conviction, the provisions of the Criminal Code with respect to absolute and conditional discharges do provide some relief, especially in the case of first offenders. If it is the desired objective that first offenders should not be burdened with a criminal record (as most of the witnesses before this Committee have suggested), the adequacy of these provisions must be examined.

The absolute and conditional discharge provisions, which are found in Section 662 of the Criminal Code are applicable in cases where an accused person, other than a corporation either pleads guilty or is found guilty of an offence. They do not apply where a minimum punishment is prescribed by law, or where an offence is punishable by imprisonment for fourteen years, life or death. Furthermore, in considering whether or not to apply the discharge provisions, a judge must consider (a) it to be in the best interests of the accused to do so and (b) that it is not contrary to the public interest to discharge the accused.

If the court finds that the accused comes within these guidelines it is given a discretion not to enter a conviction against the accused and to order the accused discharged. The order of discharge may be absolute or conditional.

In both cases the accused is deemed not to have been convicted of the offence to which he plead guilty or was found guilty. Where the discharge imposed is conditional, the accused is placed on probation for a period of time and is subject to the conditions set out in a probation order. If an accused who is bound by a probation order during the currency of that order, breaches the terms of the order or reinvolves himself in another breach of the law, he may be brought back before the court and the discharge revoked and a conviction entered with respect to the offence for which he was discharged. Following the entry of a conviction, the accused is subject to any sentence which he could have received had he not been discharged initially.

Although these provisions give a court ample power to prevent the stigma of a criminal conviction from arising, especially in the case of first offenders, it must be remembered that this remedy is discretionary and such being the case, variability is bound to result in its application. As Senator Neiman pointed out when she addressed the Senate on December the 5th, 1974, of the eighteen thousand six hundred and three convictions for simple possession of marijuana last year, only four thousand five hundred cases resulted in discharges. Even with the vast majority of prosecutions for simple possession of cannabis being brought under the summary conviction provisions of the Narcotic Control Act, there is

by no means any uniformity in the application of the discharge provisions.

Those who practice law in the criminal courts on a daily basis can point to certain judges who routinely apply these provisions in cases of simple possession of cannabis and to other judges who routinely refuse to apply them.

Whether the removal of the possibility of incarceration as proposed in Bill S-19 will result in any greater consistency is difficult to foresee. In fact, even where Crown Counsel requests a discharge, some judges have been reluctant to accede to the request. In Regina v. Derkson, Provincial Court Judge (6) Ostler, of the British Columbia Provincial Judges Court, made the following remarks in reply to a Crown request for a discharge:

"Counsel has stated that the Crown will, in future, adopt a more tolerant posture in these cases. I have no quarrel with that position but in my opinion, while leniency in the form of a sentence of other than fine or imprisonment may well be appropriate in most cases of a first offence tried summarily under this section, it is nevertheless necessary that the courts express the moral condemnation of the community for deliberate infractions of the criminal law and, in that event, the Crown should, generally speaking, have access to Code ss. 662.1(4) and 666(1) in the event that the subject proves to be recalcitrant.

In fine, it is my opinion that the discharge--the finding of guilt without the usual concomitant of conviction--should never be applied routinely to any criminal offence,

in effect labelling the enactment violable. It should be used frugally, selectively and judiciously, as Parliament obviously intended. If it is considered that an absolute or conditional discharge is the appropriate penalty for a first offence under this section, then Parliament should so declare. The courts should not compromise or circumvent the law."

(7)

An alternative to the lack of uniformity in the application of the discharge provisions of the Criminal Code would be to provide for their automatic application in the case of first offenders who plead guilty to, or are found guilty of the offence of simple possession of cannabis. If this is a viable alternative, the court could still be left with a discretion in terms of whether the discharge ought to be absolute or conditional, depending on the circumstances in each case.

If every first offender is discharged automatically, this may be tantamount to eliminating the offence of simple possession of cannabis as far as first offenders are concerned. Article 36, paragraph 1 of the Single Convention on Narcotic Drugs requires possession to be a punishable offence. By eliminating the punishment and the entry of a conviction in the case of first offenders, are we contravening Article 36? Article 36 does not differentiate between first and second offenders. It may be argued that by retaining the entry of a conviction in the case of subsequent offenders by not automatically discharging, the offence of simple possession has not been wiped off our

statute books as a punishable offence, and that Article 36 is complied with.

To provide for automatic discharges, in particular automatic absolute discharges, might be to completely eliminate any deterrent to a person inclined to possess cannabis. With a conditional discharge at least, the effect of a probation order on the offender with the consequent scrutiny by the courts during the currency of the order may in itself accomplish this desired deterrent effect.

Under the present provisions of the Criminal Code, there is no power given to a court to impose a fine on an offender and subsequently discharge him. Some judges have attempted to deal with this restriction by discharging an offender and then imposing heavy costs as a condition of his probation. Perhaps worth considering is legislation enabling the court to fine and subsequently discharge. Both the goal of deterrence and the elimination of a criminal record could be accomplished by taking this approach.

If the concept of automatically discharging a first offender creates uneasiness, a middle ground between automatic discharges and discretionary discharges can be reached by adopting a system similar to that employed in the Bail Reform provisions of the Criminal Code. A middle ground may be the proper approach to this problem by virtue of the fact that certain cases simply may not be appropriate for a discharge;

in particular cases where a large quantity of cannabis is involved.

The Bail Reform Act which may be used as a technical (8) model to achieve a middle ground provides that where an accused person is taken before a justice to consider the question of bail, the Crown has the onus of showing cause why that person should be detained. If the Crown is unable to establish cause for detaining the accused, the Crown may still be able to show cause for requiring a form of security in the nature of a surety, a recognizance, or valuables to accompany the release of the accused. If the Crown fails to establish the necessity of any form of security, the accused is to be released on his own undertaking.

A similar mechanism may be employed to deal with the simple possession of cannabis. The Crown may be given the onus of showing cause why the accused should be dealt with by way of fine without a discharge. If the Crown is not successful in meeting this burden, then the accused shall be discharged. Once it is determined that the accused should be discharged, the Crown should have the onus of satisfying the Court that the discharge should be conditional and not absolute. If the Crown is unable to meet this latter burden, the accused should be discharged absolutely. In deciding whether or not the Crown has met its burden, the prior record of the accused, the quantity of cannabis seized and the circumstances surrounding the seizure,

as well as the age and background of the accused are all relevant factors and could be set out by statute as guidelines to be followed.

The Canadian Medical Association in its brief to this Committee of the Senate has advocated with respect to the offence of simple possession of cannabis:

"That legislation be enacted to provide for the destruction of all records of a criminal conviction after a reasonable period of time."

The Canadian Medical Association has suggested that there be an automatic erasure of the criminal record after a two or three year "charge free probationary period" has elapsed.

The difficulty with this suggestion is that during the two to three year probationary period, the offender must suffer the burden of a criminal record.

Where a conditional discharge is imposed on the other hand, the probationary period still exists, but during the currency of the probationary period the offender is able to state that he has no conviction for the offence involved.

(9)
In both cases, should there be a failure to comply with the conditions of probation, the offender will pay the penalty with a permanent criminal record (unless a subsequent application for a pardon is successful).

The State of Oregon has adopted legislation which is also a middle ground to the problem of maintaining a deterrence

and at the same time precluding the difficulties which arise from a criminal record. Possession of marijuana in an amount less than one ounce is regarded as a civil infraction punishable by a fine not in excess of one hundred dollars. Because the violation is not regarded as a crime, no criminal record is involved. If such a system is desirable, our present absolute and conditional discharge provisions could be adapted to meet the need. A discharge could be granted automatically where the amount of marijuana involved is under a defined limit.

Setting guidelines in terms of the amount of cannabis involved may just very well introduce unnecessary artificiality into the whole problem. The issue of determining when possession of a soft drug for one's own use is to be condoned by law and when it is not, is a matter of philosophy, as well as the issue of whether quantity should be a determining factor at all once a judge determines that the soft drug is for the use of the apprehended person only.

It should be recognized as well that setting arbitrary limits is an unsatisfactory concept when the courts are facing problems of joint possession. As our law now stands, any number of persons may be held to jointly possess the same article, and to possess that article in its entirety.

Problems also arise in determining what arbitrary limit should be imposed, if an arbitrary limit is sought as the answer to the "decriminalization" problem. Do we measure

in terms of ounces. If we do, how do we distinguish between marijuana, hashish and cannabis resin, all of which involve different percentages of the active chemical ingredient. Perhaps the T.H.C. content of the substance ought to be the unit of measurement.

If an arbitrary unit is the answer, then legislation will have to be enacted to provide for the admissibility of certificate evidence to prove the amount of cannabis involved, unless of course it is desirable to have viva voce evidence presented in court on this question. Consideration will also have to be given to the question of what happens when the charge laid is possession over the arbitrary limit and the evidence indicates a quantity under the limit and vice-versa.

Whether or not a procedure is implemented for automatic discharges or automatic erasure of criminal records, a person who acquires such a record can avail himself of the legal machinery set up for the granting of a pardon pursuant to the Criminal Records Act. In fact, a person who receives a conditional or absolute discharge may still make an application for a pardon, and there are certain advantages to going this route. Although a person may receive a discharge, a record is still kept of this discharge.

One of the reasons for keeping a record is to enable the authorities to distinguish between first offenders and subsequent offenders. Without a record, subsequent offenders

could indefinitely avail themselves of the discharge procedures. Where however a pardon is granted, the Solicitor General may require any person having the custody or control over the record of conviction to deliver it to the Commissioner of the R.C.M.P. Once delivered to the Commissioner, the record is kept separate and apart from other criminal records (which is not the case with the record of a discharge).

Furthermore, it is unlawful for the Commissioner or any member of a department or agency of the Federal Government where the record is being kept, to disclose the record without the prior approval of the Solicitor General. The Criminal Records Act however, only deals with federal agencies and departments of the Federal Government and does not legislate with respect to the keeping of records by provincial agencies or by local police forces or credit bureaus.

As can be seen, advantages accrue to a "discharged" offender from applying for a pardon. Concern however, has been expressed over the fact that little use is being made of the pardon. Perhaps the same procedures for destruction of a criminal record can be brought into operation automatically after a certain specified number of years following the receipt of a conditional or absolute discharge by the person who plead guilty or was found guilty of simple possession of cannabis.

A procedure similar to that envisaged is presently utilized in the Criminal Code with respect to a "stay of

proceedings". Section 508 (for indictable offences) and Section (10) 732.1 (for summary conviction offences) of the Criminal Code allow the Attorney-General or Counsel instructed by him to direct that the proceedings pending against an accused be stayed. Proceedings "stayed" in this fashion may be recommenced without the laying of a new charge by the Attorney-General or Counsel instructed by him giving notice that the proceedings are to be "recommenced". Section 508 provides that "where no such notice is given within one year after the entry of the stay of proceedings, the proceeding shall be deemed never to have been commenced". Section 732.1 is similarly worded, except that it takes into account the limitation periods applicable to summary conviction offences.

Although "stayed proceedings" are deemed never to have been commenced, a record is still kept of the "stay". If this section is to be used as a model for the automatic destruction of criminal records, additional provision will have to be made for the delivery up of the record of the discharge to the Commissioner of the R.C.M.P., to be kept separate and apart from other criminal records, as is presently done when a pardon has been granted.

One of the difficulties with the Criminal Records Act as it now stands, irrespective of whether a criminal record is sealed up automatically or by way of application,

is the limited scope of the act itself. Local police forces and credit agencies very often keep their own records and nothing in the Criminal Records Act compels these bodies to seal off their records following a pardon and nothing prevents disclosure of the record by them. To enact Federal legislation requiring these bodies to deliver up their records to the Commissioner of the R.C.M.P. may very well be beyond the constitutional jurisdiction of Parliament. Legislative authority over property and civil rights is given to the provinces under the British North America Act, and it could be argued that such legislation would be an encroachment on this provincial power.

The federal criminal law power pursuant to the British North America Act may however provide the means to prevent disclosure on a national basis. Parliament could conceivably create an offence forbidding anyone from disclosing a pardoned conviction be it by a federal or provincial body. The Le Dain Commission, although not dealing with this particular question, explored the federal criminal law power in some depth. At page 227 of the report, the following comment is made:

"The federal criminal law power permits Parliament to select any conduct for criminal law prohibition, whether or not Parliament could otherwise exercise a regulatory jurisdiction with respect to such conduct. For example, Parliament can prohibit certain conduct in the field of highway traffic, such as dangerous and

impaired driving, although it does not have the power to regulate highway traffic. There is one limitation on the exercise of the federal criminal law power: it must not be a mere pretense or 'colourable' use to usurp a provincial jurisdiction. It must be used for a true criminal law purpose and not for a legislative purpose that lies outside federal jurisdiction."

By virtue of Section 576.2 of the Criminal Code of Canada, it is an offence for a member of a jury to disclose the proceedings in the jury room. Furthermore, a justice at a preliminary inquiry has the power to order that the evidence heard on the preliminary inquiry shall not be published in the newspapers, and an offence is created for noncompliance with this order.

(11)

Just how a local police force or credit agency is to ascertain whether a conviction which they now have on record has been pardoned, is a procedural difficulty which will require some working out. If by creating an offence for disclosure, the onus will be on the local credit agency or police force to ascertain whether a conviction has been pardoned before releasing it, a mechanism will have to be devised whereby these bodies have access to the fact of a pardon.

Apart from the problem of disclosure, a problem also exists with respect to prospective employers or other agencies asking a person whether he has ever received a pardon. A number of federal institutions are specified in Section 8

of the Criminal Records Act and by virtue of that section, they are precluded from asking such a question. Nothing exists to prevent the question being asked by institutions other than those specified in the section.

Furthermore, a person who has received a conditional or absolute discharge may still be asked on an application form or in various other settings, whether he has ever received a discharge, or whether he has ever been arrested. The fact that such a person can truthfully say that he has never been convicted is little protection for him. Since there is concern over the handicaps imposed on certain individuals by virtue of their being convicted, it is suggested that these gaps in the legislation are worthy of consideration.

Turning from the question of criminal records and the stigma of conviction, there are other aspects of Bill S-19 which require comment.

Much has been said about the definitions of trafficking which appear in the Food and Drugs Act and the Narcotic Control Act. A number of witnesses before this Committee have suggested narrowing the definition of trafficking in these statutes to exclude those cases of "technical trafficking" which appear from time to time in our courts.

Section 2 of the Narcotic Control Act defines "trafficking" as follows:

- " 'traffic' means
(a) to manufacture, sell, give,

administer, transport, send, deliver or distribute, or

(b) to offer to do anything mentioned in paragraph (a) otherwise than under the authority of this Act or the regulations."

Section 33 (with respect to controlled drugs) and Section 40 (with respect to restricted drugs) of the Food and Drugs Act defines "trafficking" as follows:

" 'traffic' means to manufacture, sell, export from or import into Canada, transport or deliver, otherwise than under the authority of this Part or the regulations."

The activities of giving, administering, sending and distributing constitute trafficking under the Narcotic Control Act, but not under the Food and Drugs Act. Importing and exporting on the other hand, are considered to be trafficking under the Food and Drugs Act, but not under the Narcotic Control Act. This however is not an expansion over the provisions of the Narcotic Control Act, because this latter statute deals with importing and exporting as a separate offence. The Food and Drugs Act creates no separate offence of importing or exporting but deals with these activities as acts of trafficking.

One of the surprising and somewhat anomalous aspects of Bill S-19 is that as far as cannabis is concerned, the old Narcotic Control Act definition of trafficking is adopted. No one who has appeared before this Honourable Committee has suggested that LSD and MDA are less dangerous substances than

cannabis and its derivatives. If however, Bill S-19 is passed, the Food and Drugs Act will contain a wider and more encompassing definition of trafficking in respect of cannabis than it contains in respect of MDA and LSD.

The Canadian Bar Association respectfully recommends that the definition of trafficking in Part V of Bill S-19 be amended to coincide with the definition used in relation to restricted drugs.

The penalties for importing and exporting cannabis proposed in Bill S-19 are more onerous than the penalties now set out for importing or exporting controlled or restricted drugs. Under the present Food and Drugs Act, importing and exporting is prosecuted as a case of trafficking. The maximum penalty on summary conviction is eighteen months incarceration. Bill S-19 sets out a maximum penalty of two years, on a summary conviction prosecution for importing or exporting cannabis.

By indictment, the maximum penalty for importing or exporting restricted or controlled drugs is ten years. No minimum penalty is set out even where the importing or exporting is purely commercial in nature. When the Crown proceeds by way of indictment under Bill S-19 with respect to importing or exporting cannabis, the maximum penalty is fourteen years incarceration. Furthermore, a minimum penalty of three years is provided for (unless the accused can establish that he was in possession for personal consumption).

There seems to be no apparent reason for this discrepancy in penalties, especially in light of the fact that Bill S-19 treats simple possession of cannabis in a lighter vein than the simple possession of restricted or controlled drugs.

The Canadian Medical Association has recommended a clarification of the definition of trafficking. Under our present definitions many acts more akin to simple possession than to trafficking in a commercial sense, come under the web of trafficking. Under the Narcotic Control Act and under the proposed Part V of Bill S-19, if one individual at a party hands a marijuana cigarette to a friend to smoke, perhaps in return for a similar gesture a week earlier, this would seem to constitute the offence of "trafficking" even if no money changes hands; for a "giving" is trafficking. Mailing one marijuana cigarette to a friend is trafficking. If two friends purchase marijuana from the same dealer, each paying an equal share, and one of the two attends on the dealer to pick up the marijuana and then proceeds to deliver his friend's share, this is trafficking.

A recent decision of the British Columbia Court of Appeal illustrates just how technical the definition of trafficking is. The case is Regina v. William Barnard O'Connor
(12)
which was decided on January 16th, 1975. The accused and his wife purchased some cannabis resin and a quantity of LSD. The drugs were purchased by the accused from the joint funds of his

wife and himself. His wife knew of the purchase and consented to it. Both the accused and his wife were users and the accused was apprehended carrying home the drugs for their joint personal use.

The accused was found guilty of trafficking contrary to the Narcotic Control Act and contrary to the Food and Drugs Act, and this finding was upheld on appeal notwithstanding the fact that the drugs were for the joint personal use of the accused and his wife. The British Columbia Court of Appeal held that in essence the accused was in the process of transporting drugs to his wife and that transporting for the use of another person is trafficking under both statutes.

A similar result was reached by the British Columbia Court of Appeal in Regina v. Taylor. Here, six heavy smokers of
(13)
hashish decided that there was an economic advantage to be gained in purchasing hashish in bulk rather than individually. They pooled their money and purchased a quantity of hashish. Unfortunately, for the one person charged, he was given custody of the drugs. He hid the drugs in a place where it would be available to all six members of the group on an honour system. None of the hashish was offered to anyone outside of the purchasing group of six. The accused was discovered in possession of the hashish and charged with possession for the purpose of trafficking. A conviction was upheld on appeal because the purpose of the possession by the accused was to "give, deliver or distribute" it to the other members of the group. Taylor was sentenced to

four months in jail.

In Regina v. Sartor an accused who purchased MDA for
(14)
himself and his girlfriend and after purchasing it carried it
to the hotel where the two were staying, was found guilty of
possession for the purpose of trafficking.

As long as trafficking is defined in the wide terms
presently used, these convictions will continue to be entered
notwithstanding the transactions involved are completely devoid
of commercial trappings or profit.

Section 48(2) of Bill S-19 provides for differential
treatment of first offenders as opposed to subsequent offenders.
By virtue of Section 48(3), a person who has been previously
convicted of an offence under Part V of Bill S-19 or under
the Narcotic Control Act is deemed to be a subsequent offender.
A person who has a previous record in relation to controlled or
restricted drugs under the Food and Drugs Act is not regarded
as a subsequent offender. Furthermore, a person with a record
under the Criminal Code of Canada for conspiracy to traffic
in marijuana, or heroin or in fact any contraband chemical,
is not treated as a subsequent offender. If a distinction is to
be made between first and subsequent offenders, it may be worth
considering including persons with a previous record under the
Food and Drugs Act and under the Criminal Code (with respect to
drug offences) in the definition of "subsequent offender".

The Canadian Bar Association is grateful for the opportunity to comment on the proposed Bill S-19 and we hope that our remarks have been of some assistance. The Canadian Bar Association makes this submission without advocating any particular solution to the issues now under consideration. Our remarks are directed solely at trying to clarify for this Honourable Committee, the problem areas associated with Bill S-19 and with legislation in general dealing with the subject matter of cannabis and its derivatives.

REFERENCES

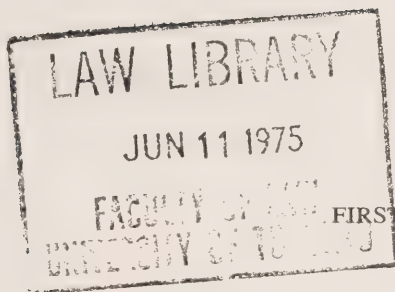
- (1) Cannabis, A Report Of The Commission Of Inquiry Into The Non-Medical Use Of Drugs, Information Canada, 1972. At page 209.
- (2) (1969) 3 C.C.C. 101 (B.C.C.A.)
- (3) IBID. page 104
- (4) Revised Statutes Of Canada 1970 C.12
- (5) Revised Statutes Of Canada 1970 C. I-1
- (6) (1972) 20 C.R.N.S. 129
- (7) IBID. page 132
- (8) Statutes Of Canada 1970-71 C.37
- (9) Section 662.1(4) provides that:

"Where an accused who is bound by the conditions of a probation order made at a time when he was directed to be discharged under this section is convicted of an offence, including an offence under section 666, the court that made the probation order may, in addition to or in lieu of exercising its authority under subsection 664(4), at any time when it may take action under that section, revoke the discharge, convict the accused of the offence to which the discharge relates and impose any sentence that could have been imposed if the accused had been convicted at the time he was discharged, and no appeal lies from a conviction under this subsection where an appeal was taken from the order directing that the accused be discharged."

Because this section speaks of revoking the discharge and then convicting the accused where the accused re-involves himself, the inference to be draw is that during the currency of the probation order, the accused is to be regarded as conviction free.

- (10) Section 508 (Indictable Offences and Section 732.1 (Summary Conviction Offences)
- (11) Section 467 Of The Criminal Code Of Canada
- (12) January 1975, (British Columbia Court of Appeal); as yet unreported.
- (13) (1974) 17 C.C.C. (2a) 36
- (14) (1974) 6 W.W.R. 448 (Alta. Dist. Crt.)

SC.LCA
UNIVERSITY OF TORONTO
FACULTY OF LAW
LIBRARY
TORONTO S ONT



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 19

TUESDAY, APRIL 29, 1975

Thirteenth Proceedings on Bill S-19, intituled

“An Act to amend the Food and Drugs Act, the Narcotic Control Act
and the Criminal Code”

(Witnesses and Appendix: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hasting	Riel
Hayden	Robichaud
Laird	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, April 29, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Fergusson, Laird, McGrand, McIlraith, Neiman, and Quart. (9)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. R. L. du Plessis, Department of Justice, Legal Adviser to the Committee.

The Committee continued its examination of Bill S-19 intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

The following witnesses, representing the *Department of Justice*, were heard in explanation of the Bill:

Mr. J. A. Scollin,
Assistant Deputy Attorney General (Criminal Law)

Mr. S. F. Summerfeld, Director,
Criminal Law Section;

Mr. L. P. Landry Director,
Montreal Regional Office:

Mr. Julius Isaac,
Toronto Regional Office;

Mr. W. Halprin,
Vancouver Regional Office.

At 12:50 p.m. the Committee adjourned until 2:00 p.m.

At 2:00 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Godfrey, Laird, McGrand, McIlraith, and Neiman. (8)

Present but not of the Committee: The Honourable Senators Greene and Haig.

In attendance: Mr. R. L. du Plessis, Department of Justice, Legal Adviser to the Committee.

The following witnesses, representing the *Law Reform Commission of Canada* were heard:

Mr. Justice E. P. Hartt, Chairman;

Professor P. J. Fitzgerald, Senior Research Officer.

On Motion of the Honourable Senator McIlraith it was *Resolved* to include the "Notes for Presentation" by Mr. Justice Hartt and Professor Fitzgerald in this day's proceedings. It is printed as the "Appendix".

At 3:45 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, April 29, 1975

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 11 a.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, the witnesses before the committee this morning are representatives of the Department of Justice, led by Mr. J. A. Scollin, the Assistant Deputy Attorney General (Criminal Law). I will ask Mr. Scollin to introduce the witnesses, and to proceed from there.

Mr. J. A. Scollin, Assistant Deputy Attorney General (Criminal Law), Department of Justice: Mr. Chairman, honourable senators, perhaps I could start by identifying those I may be calling on for expertise that I do not have. I have with me Mr. S. F. Summerfeld, the Director of the Criminal Law Section of the department. Next to him is Mr. Julius Isaac, who is in charge of prosecutions in our Toronto regional office. Next to him is Mr. Bill Halprin, who is in charge of prosecutions in our Vancouver office. Next to him is Mr. John Hodges, who has special responsibility in Ottawa as Senior Counsel in respect of drugs. Next to him is Mr. L. P. Landry, who is the Director of our Montreal regional office. We also have with us Mr. C. T. Mullane, who is Director of Legal Services in the Department of National Health and Welfare. I am sorry it is such a large, if impressive, array. It is just that there is expertise among these officials that I think you might want to call on in respect of some of the points that have been raised.

Senator Greene: You have the weight of evidence!

Senator Laird: Do they all want to talk?

Mr. Scollin: Not necessarily, senator; it is entirely up to you.

I should perhaps open by thanking the committee for this invitation. There is a—perhaps unnecessary—caution. None of us, of course, can be really very helpful in terms of policy. The policy is, after all, that of the government, and in particular the Minister of National Health and Welfare. However, in terms of prosecution information that over the years has been accumulated by some fairly mature prosecutors, it may be that in some respects we can be of assistance to the committee in its deliberations. We have noted a number of points that have been raised. For example, there is the so-called reverse onus, the issue of non-commercial trafficking, some criticism of the provision regarding importing for personal use, aspects like criminal records, the question of fingerprinting, the question of the option given to the Crown to proceed

either by summary conviction or by indictment. In respect of some of these matters senators may wish to address questions to us, and if that is suitable it is the way I think we would probably prefer, subject to any contrary wishes of the committee.

Senator Laird: Mr. Scollin, I think we might as well get right at the heart of the matter immediately. Suppose we come to the conclusion that we would like to frame some sort of amendment that would not take away the deterrent effect of a possible conviction for possession of a small amount of marihuana, but would add something that would enable the record to be wiped out. Can you tell us how, mechanically, that might be done?

Mr. Scollin: If a matter of that sort were to be done, it would presumably be done by adding to the bill a provision that would be an additional amendment to the Criminal Records Act. You are amending the Food and Drugs Act, the Narcotic Control Act and the Criminal Code. I would think the Criminal Records Act is the only one that would properly be suitable for an amendment of the sort you are contemplating. It is not one of the acts which is subject to amendment here, and I am not sure what your rules are as to the ambit of an amendment to a bill. Perhaps, without going into policy, I could express one cautionary word. Whatever is done here, the impact of it on other areas of the criminal law would probably deserve some attention, leading to possible amendment. If, in respect of this particular substance in this particular bill, senators felt that an amendment of this sort was desirable, I am sure you would in any event consider its implications in respect of other conduct that presently is classified as criminal; whether or not an amendment of this sort, which involves a pretty broad principle, could or should suitably be dealt with in a bill of this sort without consideration being given to other areas. For example, is there any reason why, if this principle is sound, it should not be applied to theft, or it should not be applied to heroin convictions, or it should not be applied to convictions for restricted or controlled drugs under Part III or Part IV, or other offences under federal statutes? I am not saying that the fact that it was done here alone would be a reason against it, but implications of this sort ought to be considered across the board field. Your legal advisor would probably be able to tell you better than I can whether an amendment of that sort would be possible within the ambit of the bill.

Senator Laird: This does become pretty important. We may—let us say we do—consider that the possession of a small amount of marihuana is in a unique category. We are not comparing it to petty theft or anything else. Supposing we come to the conclusion that it is in that unique position, what I am trying to find out from you or from somebody is, can we mechanically do it by amending this act? You have raised certain doubts as to whether we can.

Mr. Scollin: I would think it more suitably belongs to the Criminal Records Act, but, subject to what Mr. Hopkins might advise as to the ambit of the amending powers, I myself would not see anything wrong in putting that provision right in the Food and Drugs Act in relation to Part V.

Senator Laird: I was thinking the same thing. After all, I am a lawyer, too, and it seemed to me on the face of it that we could treat the matter in this bill without necessarily amending any other act like the Criminal Records Act or the Criminal Code. It may be someone else has some other idea.

Senator Croll: How do you defend it, insofar as it affects others of a similar, like or almost like nature? We must do that.

Mr. Scollin: In the case of theft of a dollar this year or the equivalent amount, \$2, next year, should that be subject also to an automatic wipe-out rule? Should very little impaired driving, perhaps just 0.09, be subject to a wash-out, too? Perhaps it should. I don't know. All I am saying is that that is the caution that I am sure you will give to it.

Senator Laird: That is a matter of policy, and I am just trying to find out. We may or may not come to the conclusion. If we do, can we do it, mechanically? By the way, I will add this: Is there any possible way in which an individual applying, let us say, for a job or a visa could by legislation be relieved of the necessity of answering a question such as "Were you ever convicted of an offence?" by answering "No"? You have probably read some of our evidence and you know that at the present time it would appear that under those circumstances, unless you are willing to lie, you must say, "Yes, I was convicted and pardoned" or whatever the case may be.

Mr. Scollin: In the case of an absolute or conditional discharge, I disagree. I rather think that the Canadian Bar Association, Criminal Justice Section brief did give the impression—I hope I am not wronging them—that it would be improper to answer, "No, I haven't been convicted" in the case of an absolute or conditional discharge. That I disagree with. I think that is not so. I think an absolute or conditional discharge does not amount to a conviction. Section 662.1 of the Criminal Code, which is the absolute and conditional discharge section, makes it perfectly plain that whether it be preceded by a plea of guilty or by a finding of guilty, if the court does not proceed to conviction, the accused just is not convicted.

I know that the Criminal Records Act has been extended to apply the pardon rules to discharges, but that does not alter the basic fact that there is no conviction. If the person is asked: has he been convicted of, say, simple possession of marihuana, to my mind he can properly, and without perjury or any other offence, answer "No."

Senator Laird: That is very interesting. That is a contrary view.

Senator Croll: Under what condition?

Mr. Scollin: Section 662.1(1) of the Code.

Senator Croll: Read it, please.

Mr. Scollin: It says:

Where an accused, other than a corporation, pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable, in the pro-

ceedings commenced against him, by imprisonment of fourteen years or for life or by death, the court before which he appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or upon the conditions prescribed in a probation order.

So, it is instead of convicting the accused. You will see that the provision does not apply in a case where a minimum penalty is prescribed, or in the case where 14 years or more is the penalty. In all other cases, this course is open to the accused, and does not result in a conviction.

Senator Croll: You are talking about a man who is not convicted.

Mr. Scollin: That is right.

Senator Croll: That is not our question. We are talking about a fellow who is caught with a bit of marihuana, he has had a bit of a smoke and he is in there, and the judge says, "You are convicted." Never mind the penalty; he has got a conviction. That is what we are concerned with, and the Bar Association thought that he could not answer "No" to that.

Mr. Scollin: I agree—if a conviction is entered.

Senator Croll: Our trouble is to get rid of that conviction for the type of offender who has not been accused of an offence of that kind in years and years, any number of years, two or three. How do you get rid of that?

Mr. Scollin: In cases within the federal jurisdiction, the Criminal Records Act does provide for the pardoning process. Insofar as Canadian jurisdiction is concerned—and this is different from these visa matters—you probably have a statutory right to say, by printing it in the bill, that following a conviction for simple possession of marihuana, if after three years, or whatever, the accused has been in no further trouble, or words to that effect, the conviction shall be deemed to have been vacated. But this is effectively what the pardon provisions say.

As far as the United States is concerned, if it is a United States document that is being filled up, I do not suppose they really give a hoot what Canadian law says. As far as they are concerned, a conviction is a conviction.

Senator Laird: That is it; that is what is worrying us.

Mr. Scollin: That is a jurisdictional problem, until you get the United States or the other country concerned to co-operate. You will be guided by their law. If they ask, "Have you ever been arrested, charged or tried for a criminal offence, or convicted of a criminal offence?" I have not really much doubt that, if this was the foundation of an application to the United States, in due course when their authorities discovered the facts, they would be inclined to say, "We know what your answer was under Canadian law but, as far as we are concerned, unless we have a comparable provision that enables you to tell a lie—"

Senator Croll: Let us take it that under Canadian law he has been convicted and he has been pardoned. If he then has to answer a question, "Have you ever been convicted?" when he applies for a bond, what is his answer?

Senator Laird: That is what I am trying to get at.

Senator Croll: That is what is bothering us.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: We were informed that he has to say "Yes."

Senator Croll: Yes.

Senator Laird: That's the thing.

Senator Croll: We were hoping you would say "No."

Mr. Scollin: So far as matters within the provincial jurisdiction are concerned, the answer is that he would. So far as the Criminal Records Act is concerned, applying to matters within federal control, section 8 prohibits that question being asked, in fact. It says:

8. No application form for or relating to

(a) employment in any department—

The government, in effect.

(b) employment by any Crown corporation as defined in Part VIII of the Financial Administration Act,

(c) enrolment in the Canadian Forces, or

(d) employment upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, shall contain any question that by its terms requires the applicant to disclose a conviction in respect of which he has been granted a pardon that has not been revoked.

So, federally, you are fine. But assuming this is constitutionally sound and that you do not have the authority to extend this to applications for employment with, say, the provincial securities commission—and that, I take it, was the basis on which section 8 was framed in this limited way—I do not think there is any way that you can prevent the province, in respect of its enforcement of its own securities legislation, asking the question, "Have you been convicted?" And, assuming this is constitutionally sound, they could penalize a person for giving a false answer to that question.

Senator Croll: What you are referring to there is applicable, really, to the scope of employment within the federal government.

Mr. Scollin: That is right.

Senator Croll: But I am referring only to the little fellow who is coming in to be a clerk or cashier. I don't care where he is; he is not covered.

Mr. Scollin: In the federal government case?

Senator Croll: No, outside the federal government.

Mr. Scollin: Outside the federal government he is not.

Senator Croll: The federal government are not troublesome in this case. They are helpful, if they can be, and they are. I am referring to when it is outside the scope of the government. The governments understand these things, both provincial and federal, but private employees are in an entirely different position.

Mr. Scollin: I have no doubt that you could remove any criminal penalty for an answer "No" given to a question in respect of a conviction that has been washed out, but you cannot prohibit them from asking the question, if this section is constitutionally sound.

Senator Croll: But then you are getting him lying again. That is the trouble.

Mr. Scollin: Once the chap is convicted, he is convicted. Eventually you must face the reality that people do know. People do find out, and one can only go so far in saying that a conviction is not a conviction.

Senator Croll: That is right.

Senator Asselin: What if we said that, if someone is convicted for simple possession of marihuana, for the first offence he would have no criminal record?

Senator Neiman: That was suggested in the brief from the Canadian Bar Association. I assume you have read that.

Mr. Scollin: Yes.

Senator Neiman: What did you think of their suggestions? Did you think that the various methods of dealing with the problem put forward by them had any practical merit to them?

Mr. Scollin: Yes. In fact, this is what absolute or conditional discharge, as used in England, was designed to do. It was designed to relieve the consequences that follow from conviction. I think once you have the conviction—again assuming that constitutionally the federal government has the power—you are limited as to the effect you can give to a wash-out of that conviction.

Senator Greene: Mr. Scollin, I had been saving this question for Mr. Justice Hartt. However, now that the matter has been opened up, I think, on sober second thought, I might find the department's thoughts on the question, because perhaps my desire to ask the question of Mr. Justice Hartt was based on a lifelong ambition to get a judge of the high court in the witness box! Maybe I can alloy that desire by asking you the question:

When it was decided to put cannabis under the Food and Drugs Act, why was it felt necessary to open up the whole panoply, power and procedures of the criminal process at all? Why not try this thing in a manner other than under criminal procedures? You have more or less compromised by saying, "Don't make it indictable. Do it by summary conviction," which is the lesser of the two powerful instrumentalities of the criminal process. But why bring it under criminal procedure at all? We can have hearings under the Food and Drugs Act which do not come within the criminal law. Why is it necessary to bring this food and drugs offence within the ambit of criminal law?

Mr. Scollin: For a start, I think if you are going to use a system of arrest, detention and trial, then, legally, by virtue of section 27 of the Interpretation Act, all the provisions of the Code apply. If you are going to define things as criminal offences, then the whole panoply of the Criminal Code comes into play.

While I am not anxious to avoid answering the question, it seems hardly right to me to make an exception of one drug. For example, the controlled drugs and restricted drugs are, in the case of infractions and violations, dealt with by the ordinary process. Unless you are going to look at it on a broad base and say that neither the controlled drugs nor restricted drugs nor cannabis—none of these—should fall within the criminal process at all, then it would be invidious to isolate one, cannabis, and say that it should not but the restricted and controlled drugs should.

I think the question of the application of the criminal process is really a question of policy. I would ask Mr. Summerfeld, if he would, just to mention the old nuisance section. I am sure he could indicate a case in which a non-criminal matter was, in fact, included in the Code some years ago.

Mr. S. F. Summerfeld, Director, Criminal Law Section, Department of Justice: Mr. Chairman, I am not sure when the provision actually came into the Criminal Code, but in 1906 there was a provision under which the old common law offence of nuisance could be both an offence punishable by indictment, where it was a nuisance likely to endanger life or property, and simply an offence, classified as an offence but not a criminal offence, for purposes of maintaining the criminal process in order to deal with abatements of the nuisance.

In 1911 a case on it went to the Judicial Committee of the Privy Council. The issue there was whether the provision under which the criminal offence of common nuisance was maintained, but in a non-criminal form, would support an appeal to the Judicial Committee of the Privy Council in view of the fact that appeals in criminal matters had been abolished. The Committee came to the conclusion that the Parliament of Canada has the power to take a matter which was previously of a criminal nature and label it a non-criminal matter, while retaining the criminal process for purposes of abating the nuisance it was designed to suppress. It therefore upheld the appeal.

It is a curious provision. I ran across it almost by accident. I do not know of any other situation in which it has arisen. It was dropped from the Code some time after that, for reasons that I am not sure of, but I would suspect that probably it simply fell into disuse because of the power of the attorney general to sue for injunctions to abate nuisances. In any event, it was probably felt unnecessary to maintain this criminal process for that purpose. That, however, is the story of the Toronto railway case.

Senator Greene: My fears are based on the fact that probably the automobile is one of the elements of our society that has brought our criminal courts and its procedures, as an institution, into disrepute. To drag a fellow into the criminal process because he went through a stop street has rather made the criminal process a meaningless institution to a great degree, as so many of our institutions are meaningless to the general public. Now here we are saying that cannabis we do not think is criminal because we are making it a health question by putting in into the Food and Drugs Act. We are, however, still going to hound down those who commit infractions of this health law through the criminal courts, and it seems to me that, there again, particularly the young people will say, "There you are. Those are the criminal courts for you. They are the instrument of an oppressive state. They mean nothing to us. They drag us into the criminal courts for doing something that by the judgment of Parliament is now a health question and not a criminal question." Yet all the tools of crime will be used against those who offend. That is the fear that is behind my questions.

Mr. Scollin: I take it, senator, you are not talking about major trafficking in this substance; you are only talking about possession.

Senator Greene: Only possession.

Senator Neiman: Further to the case you cited, I have a copy of the Privy Council judgment here. It is really an

interesting one. I have not read the background of the case, but would you analogize it in this way: if a person were charged with possession for the purposes of trafficking, which we would deem to be a criminal offence, and then was found subsequently to be guilty of only simple possession, which we may not consider in the same category, would you say this could still be prosecuted by virtue of this case through the criminal courts, although it would not carry the same weight of sentence or record?

Mr. Summerfeld: I would think that if anything were to be done based upon the theory in the Toronto railway case, it would be done in terms of declaring, in so many words, that the offence of simple possession, whether that was what was charged, or whether that was what resulted in a conviction which started as a charge of possession for the purpose of trafficking, would simply not be a criminal offence. The only significance, really, that I see in the Toronto Railway case is that it does uphold the principle that we can take an offence which has previously been regarded as a criminal offence and call it something else now.

Senator Neiman: I gather my analogy was, in fact, on the lines that he was originally charged with a criminal offence and found guilty of some lesser offence, which we really have not defined, and that we do not know how to define it at the moment.

Mr. Summerfeld: Well, it would be a matter of defining or labelling simple possession as an offence which is not a criminal offence, and I should think you could do that both in the case where that is the offence that was originally charged, or was some other offence that was charged, but the conviction was only for this lesser offence.

Senator Neiman: What about the various alternatives suggested by Mr. Brodsky? For instance, I think he suggested, in one case, that the judge could direct that a conviction not be registered. I think he also made another suggestion with regard to using the stay of proceedings provisions within the act. Do you think these could be used? Could we direct that they be used? What I am really getting at is that if we leave it the way it is the question of whether there can be a conditional discharge or an absolute discharge is still, at this point, left to the discretion of the judges. If we wanted to, could we take away that discretion and say that for certain cases this must be done?

Mr. Hopkins: I had just written the same suggestion down here. I do not see why this could not be done. I would like to ask the experts.

Senator Greene: The trouble is, the length of the chancellor's arm. For instance, with regard to a conditional discharge, you have to know which judges, by the length of their arm, will use a conditional discharge in an impaired driving case. Some judges say, "I do not use the section in impaired driving cases." You therefore have to find a judge who will use it.

Mr. Scollin: With regard to that they have been told they cannot use it now, but in the case Senator Neiman is talking about, I think what Mr. Brodsky, in presenting the Canadian Bar Association's Criminal Justice Section's brief suggested, was something comparable to the Bail Reform Act; that is, upon a finding of guilt of simple possession—and how the wording would go I am not going to try to suggest—"an absolute or conditional discharge

shall be granted, unless the attorney general or the prosecutor shows reason why it should not be granted." I think, if I recall, that was his suggestion.

Senator Neiman: That was one of the methods he suggested.

Mr. Scollin: That still leaves the discretion in the court.

Senator Greene: But it is a discretion which must be judicially exercised.

Mr. Scollin: It must be judicially exercised. He is obliged, as he is under the bail provisions, for example, to release a man unless he has reasons recorded in writing, and so on, for detaining him.

Senator Neiman: Could we get some comments from some of your witnesses as to whether they feel this is in fact a good idea?

Mr. Scollin: Could I invite Mr. Landry to speak to this point?

Mr. L. P. Landry, Director, Montreal Regional office, Department of Justice: As far as I am concerned, in my jurisdiction the judges and prosecutors are suggesting conditional or unconditional discharges in all possession cases unless we get to the point where we believe that the quantity may have been very much on the borderline between possession for the purposes of trafficking and simple possession, and therefore may feel, for various reasons, that this could not be a proper disposition.

If judges were called upon by law to impose conditional or unconditional discharges, unless the Crown were to show some reason to bring about another disposition, I do not feel, in my area, according to our practice, that this would cause any inconvenience because this is, at any rate, the policy that we are following, generally. I could give you statistics as to the results, but a very large proportion of those coming up under possession charges are conditional or unconditionally discharges.

Senator Croll: The chairman should not have sent the memorandum that appeared in the *Montreal Star* indicating that a couple of young ladies who had been charged with shop lifting had been discharged lightly by the judge saying, "Go away. Don't do it again." Eaton's, or Simpson's, or somebody appealed, and the court of appeal said, "You have a conviction, and there it will stand on your record forever and a day." One of the ladies was a nurse; the other was something else. The appeal and the judgment were both most unusual.

Mr. Landry: I think there must be some discretion. To say that by law it should be purely and simply a conditional or unconditional discharge would be, I believe, wrong, in that it would tie the hands of the court too much. There should be discretion.

I have no objection, personally, to having as a principle a conditional or unconditional discharge for this type of offence, provided there is room for the court, in a proper case, to do otherwise; but there are instances where conditional or unconditional discharges are applied even by the court of appeal. We recently had a case of a person from CMHC who had been accused of having accepted a gift without proper authority. The person was found guilty and received a suspended sentence. He was put on probation, and therefore had a record. He decided to appeal this disposition, and the court of appeal did change that to a

conditional discharge. You can therefore find cases where the courts have gone one way or the other way, and I think it is very difficult, sitting here, to say that they have acted improperly or properly when we do not have all the facts. I repeat, however, that as a matter of principle I see nothing wrong in following that proposal, provided that the Crown is given some room to show cause to the court why something else should be done.

Senator Laird: Like the Bail Reform Act?

Mr. Landry: Yes. I personally would not see any objection to that because in practice now, with most of our judges, that is exactly what is happening, and they are going for the conditional discharge. In fact, even there we are trying to tell them why it should be conditional rather than unconditional. You might have a person who has just been picked up, and let us say he is 18 years of age, and that person badly needs help. The marihuana problem may be nothing, but you may wish to use that occasion to send that person under the jurisdiction of probation officers for any reasons that you may choose in order to help him. But even there we say there is no point in overburdening the probation officers with a large number of cases when there is no point in sending people there. I believe that more and more our courts are asking for reasons to do otherwise. You may find that this varies from place to place and from judge to judge. If we look back at our attitudes in 1966 in Montreal, we see how much they have changed between then and now. When you have been used to dealing with hundreds of pounds of hashish, when you find one pound, you are much less impressed. So I have found that as judges become more exposed to the problem and more aware of the nature of the drug, I think they generally adopt a very reasonable attitude. But you may find it varies from place to place.

Senator Laird: But should it not be the purpose of legislation to try to get uniformity and not just leave it to the judge in a particular area?

Mr. Landry: Again, speaking personally as a prosecutor, I see no objection to that in the light of the current practice in my area. In fact, to say more than that, I do receive from the agents of the attorney general in the province reports of convictions in possession cases and whenever I see that there has been a term of imprisonment imposed I attempt to find out why this was done. I personally do not feel that it should be done unless there are very special reasons. But, again, if you have a law that says this is the disposition you follow unless somebody shows cause for another disposition, then I see no practical difficulty.

[Translation]

Senator Asselin: What worries the Committee at the present time is the fact that many witnesses have referred to decriminalization of the law and that is one purpose of this bill. Many senators, members of the committee, in spite of section 652 which you have quoted, have suggested that the judge give a conditional or unconditional sentence. As mentioned earlier, this does happen in certain areas, but in the area where I live, where I practice law, the judges are reluctant to apply section 652. In many cases, suggestions that section 652 be applied are made to the court, with the request that an unconditional sentence be given, but the judges hesitate to give such sentences. Maybe they do not hesitate to give such sentences in Montreal and Toronto.

To have uniform decisions in the courts, and maybe that is what we are asking, would there be a possibility of including in the legislation a section saying that for the first conviction of simple possession no criminal record would be established?

Mr. Landry: I believe that is the question.

Senator Asselin: I asked this question a few moments ago.

Mr. Landry: On this question, I think we are embarking on a more extensive issue. The Law Reform Commission has studied the problem of decriminalization of offences, which, according to our judiciary system, are classified as summary convictions. However, in certain European countries certain categories of offences, for example, police offences in France and Belgium are considered to be offences of that type, and there are great numbers of classifications of offences.

In the United States, there also are categories which do not relate to ours. In Canada, nothing would prevent us from having different categories. But, personally, I would like the senators to be wary of adopting a classification which would apply solely to possession of marihuana.

Senator Asselin: It's a question of creating a precedent?

Mr. Landry: There can be so many questions there. In Montreal, for example, more than 100 people appear before the court each week for failure to submit an income tax return. There are more people in Montreal, businessmen or others, who have a criminal record for having neglected to submit an income tax return.

Senator Asselin: In such cases it is a matter of administrative law, it is not criminal law.

Mr. Landry: It is nevertheless a criminal offence.

[Text]

I believe we tend to forget that these offences exist, and they may be considered to be minor offences. In fact, frequently we do not look at them as being criminal offences in the common sense of the word; they are in the same category—summary conviction offences and that is how they are classed—but still people will not take you too seriously if you say, "I have been convicted for failure to file my income tax return," but if you say, "I have been convicted on a drug offence for the possession of marihuana," may people do not distinguish between the various drugs and they feel that it is a very, very bad thing to have been convicted of that offence, but they will think very lightly sometimes of even a tax evasion conviction.

Senator Greene: Perhaps that is why we should decriminalize this, having made the original decision to decriminalize it by taking it from the Narcotics Control Act and putting it in the Food and Drugs Act. I know of an instance of a school teacher being discharged by the school board because he was simply charged with possession. He was dragged into the criminal courts. Now such a situation may not apply in Montreal, but in a small rural community it is a different matter. The school board said, "He has been charged in criminal court for possession, and we cannot have a fellow like that teaching school." Perhaps if he had had a great criminal lawyer he could have got a writ of prohibition and he could have forced them to reinstate him, but I think we forget, in drawing up

the criminal law, the ramifications through society of even being charged and brought into a criminal court. This case I have cited is just an example of what I have in mind.

The Chairman: Senator Greene, you are arguing from a wrong premise. You are assuming that my moving cannabis from the Narcotics Control Act to the Food and Drugs Act possession is decriminalized. That is not what the bill provides at all. The bill makes it that it continues to be an offence but with a lighter penalty. This bill does not at all propose decriminalization.

Senator Greene: Well why are we moving it to the Food and Drugs Act? Surely that is in itself a manifest intent of the legislators, if we pass the bill, to decriminalize.

Senator Croll: Yes, I think that at a later date that is what they have in mind.

Mr. Scollin: We have the other issue, which constitutes a greater problem than previously under the Narcotic Control Act. I believe the senators will consider this issue, that the more we decriminalize what was known as simple possession itself, the more we must consider whether this represents an encouragement. As long as major commercial trafficking remains an offence there is the possibility that by lightening the burden at the possession end we encourage the trafficker to move in, because he says "All right, laddie; don't worry, nothing will happen to you. Buy this bag; no crime" so, unless the possession and various dealings are taken as a whole we may, in fact, be encouraging it. I understand that the RCMP made this point in their brief.

Senator Laird: That is what worries us.

Mr. Scollin: Mr. Landry has outlined to Senator Neiman the results and how this suggestion would work in Montreal. May I ask Mr. Isaac and Mr. Halprin to explain how it works in their areas?

Senator Neiman: I wonder if we could also get, Mr. Scollin, some comment at the same time simply of your general views with respect to the point you made, but in terms of the sheer volume of prosecutions? Are we, in fact, using our law fairly when we deal with such a small percentage of those found guilty of this offence of simple possession and very few of those charged are convicted, according to the statistics?

Mr. Scollin: Yes, I would like to call Mr. Landry to speak to that. Mr. Isaac can perhaps indicate, so far as simple possession is concerned, what the reaction would be to Mr. Brodsky's type of suggestion.

Mr. Julius Issac, Toronto Regional Office, Department of Justice: My view would be quite similar to that of Mr. Landry, for the same reason. By directive of the Attorney General, in possession cases we encourage judges to award either conditional or absolute discharges, and the majority of these cases are disposed of in this manner. So I do not see any particular difficulty in Mr. Brodsky's suggestion. That is about all I would like to say with regard to this particular point.

Mr. Hopkins: You do not think it might tend to increase trafficking, in other words?

Mr. Isaac: It might, for the reasons alluded to by Mr. Scollin a few minutes ago, but there would be no change from the present practice. Therefore, to that extent, I do not see difficulty.

Senator Asselin: What is the percentage of those convicted for simple possession who receive absolute discharges?

Mr. Isaac: Senator, I do not have the precise figure, but it would be my guess that approximately 70 per cent or 80 per cent of those charged with simple possession receive this type of disposition.

Senator Asselin: Is that in Toronto?

Mr. Isaac: In Toronto.

Senator McIlraith: it seems that this conditional discharge and absolute discharge procedure works well in cases in Montreal and Toronto under the existing law. If that is so and the law were changed to require that the conditional or absolute discharge be granted, and that change involved a risk of making it easier or more attractive for traffickers to push their wares, is it fair to say that there would be no objection or difficulty in respect to making it an enactment of law that the judges are required to do this? I do not quite follow that part of the reasoning. Perhaps it is not fair to ask, you, as it was said by a previous witness.

Senator Croll: How do you write a law which says "Judge, you must use your judgment"?

Senator McIlraith: That is the reason for my question.

Senator Croll: That is what the judges do now.

Senator McIlraith: They are using their judgment and using it well.

Senator Croll: Yes; how much farther can we go?

Senator McIlraith: That is my point.

Mr. Isaac: I understand the point you make, senator. I can only say that if the law were written in that fashion there would be no change from what happens at the present time.

Senator McIlraith: That is right.

Mr. Isaac: The point you make might go to the question of the advisability of disposing of this type of case in the manner suggested.

The Chairman: Mr. Isaac, may I ask you a question? We talk of conditional discharge and unconditional discharge. What are the usual conditions in the case of a conditional discharge for the possession of marihuana?

Mr. Isaac: The usual conditions are that the offender, if he is at school, continue his education; if he is employed, continue his employment; to refrain from association with known drug users and traffickers; and to report to his probation officer at specified intervals. Those are the basic conditions.

Mr. Hopkins: Are there no convictions these days for simple possession of small amounts?

Mr. Isaac: For small amounts, very rarely in the metropolitan centres. As Mr. Landry indicated, in the smaller centres there are convictions and, in the odd case, custodial sentences are imposed.

Senator Neiman: Do you see this working inequities between one resident of Ontario as compared to another?

Mr. Isaac: Senator, on the one hand it can be said to be an inequity. On the other hand, we must consider the local conditions with which the sentencing judge is faced. He might be dealing with a relatively drug-free community and in his judgment the imposition of a custodial sentence would enable the community to continue in that manner. However, in that sense I would not consider it to be an inequity.

Senator Laird: That is a good point.

Mr. Isaac: There is no question, however, that there is a disparity in sentencing with respect to these offences.

Senator Greene: You made reference to your *modus operandi* in the Toronto area as being under a directive of the Attorney General. Does that directive apply only in Ontario, or throughout Canada?

Mr. Isaac: It applies throughout Canada.

Senator Croll: You are a federal employee?

Mr. Isaac: That is correct.

Senator Croll: So you made reference to the Attorney General of Canada.

Mr. Scollin: The directive was issued not only to the regional offices, but to all agents of the Minister of Justice of Canada, no matter where employed, in 1972.

Senator Asselin: You said that approximately 70 to 80 per cent of those convicted for simple possession for the first time receive absolute discharges as sentences. Why do we not change the law to achieve uniformity throughout Canada because, as was stated by the witness, those percentages might apply to the Montreal and Toronto areas, but not to Quebec and rural districts, as I said.

Senator Neiman: It is our understanding, from the evidence of earlier witnesses, that this directive was ignored by certain judges.

Mr. Scollin: Some courts were resentful, indeed, that the directive was issued at all. It was considered to be interference with the freedom of the judiciary.

The Chairman: Vancouver has been described by all witnesses as the drug capital of Canada. Since the representative of the regional office in Vancouver is in attendance, it would be worth while at this stage to have Mr. Halprin tell us of his experience.

Mr. W. Halprin (Vancouver Regional Office, Department of Justice): I am not the regional director from the Vancouver regional office. I lead our prosecution group in the Vancouver area. We are an extremely busy office, dealing with major drug problems in the major drug centre of Canada.

As previously indicated, our provincial court judges were resentful of the Department of Justice giving a directive on how they were to exercise their discretion. They felt that binding judges to a prearranged disposition was taking away their effective judicial responsibility. If we have judges, their duty is to judge. Their duty is to make dispositions of persons appearing in front of them after they have been processed through the realm of criminal justice. That process is a complete process. We should not isolate one function of the process from another function and destroy the relative judicial body of the courts in the

total picture of dealing with criminal offences in Canada. So, if you have a law which says that the judge is bound by a disposition before he is disposing of it, that, in my judgment, is a wrong exercise of legislative function.

Senator Greene: Surely, it is more within the realm of the legislative function that it is within the administrative function of the attorney general? If it is in the law, surely that is much more proper than for the Attorney General to administer this and say, "This is what you shall do." That is interfering with the independence of the judiciary. But if the law says that, surely it is not an interference; it is the law which the judge must then apply.

Mr. Halprin: I would suggest that if you make a course of conduct which has a ramification, and the ramification is that he must be discharged either conditionally or absolutely, you should not have that as a part of the administration of justice in Canada. It should be aside from the ordinary process by which other criminal offences are dealt with. In other words, if you are going to have a traffic ticket for a course of conduct—whether it be failure to file an income tax return, parking over long at a parking meter, or possession of a drug—you should not bring that objectionable conduct, if you find it objectionable, into the other criminal processes which judges are responsible to administer.

Senator Greene: That was my original point. In the penalty section, in limiting the penalty, when the law says the maximum penalty you can have is a \$500 fine, surely that is limiting the judicial discretion. You cannot hang a man; you can only impose a \$500 fine. If we say, "You can only conditionally discharge him or discharge him," that is perfectly within the province of the legislation in defining the penalty of the offence.

Mr. Halprin: If you could get everyone in Canada to possess one or two cigarettes at a time, you might be in good shape. But people often possess larger quantities than one or two cigarettes. No judge will impose a \$300 maximum fine for possession of one cigarette. I believe the judiciary have exercised their responsibilities ably and wisely and they do not do things like that. If a person is found in possession of a pound of marihuana or of a substantial quantity of cannabis resin, commonly known as hashish, the judge should not be restricted to imposing an absolute or conditional discharge, because you cannot tell people how much they should possess. I think it is common sense that if you are dealing with larger quantities the penalty should be greater.

Senator Croll: My questions have built up as the witness continued to talk. When you talk about what judges will and will not do, that they are a little bit limited, there comes to my mind the case of an engineer who, wanting to have some fun or something, grew some of the "weed", which is against the law, and when he came before the law, it was a first offence and the judge had no alternative. I think he wound up with seven years.

Mr. Halprin: I do not think that could happen.

Senator Croll: Anyway, that is not the point I was getting at.

Mr. Halprin: Cultivation does not carry a minimum penalty.

Senator Croll: That is the point. How long have you been in your present position?

Mr. Halprin: I have been a prosecutor with the Department of Justice for seven years.

Senator Croll: That's fine. I was getting at the point that the chairman gave you quite an elaborate introduction, and you accepted it very nicely. I am quite content with it. Take a minute and tell me why Vancouver is the drug capital of Canada. You have been there for seven years. You are a lawyer. You are a man with considerable responsibility. What brought it on?

Mr. Halprin: Why is Vancouver a city that is favoured with all that sunshine and rain? I suppose it is a place where a different type of lifestyle has been enjoyed by the younger segment of our community. It has found acceptance. Both geographically and philosophically, those on the westcoast, in both the United States and Canada, have favoured this type of lifestyle. The sociology is right for the cultivation of a drug subculture.

Senator Greene: It is not because you have been lenient with those charged with possession?

Mr. Halprin: No. I can explain that the so-called drug explosion occurred when I joined the Department of Justice in 1967. We had just had an information gap too. People thought that the drug cannabis, marihuana, was a terribly addictive drug. At that time there was maturity in the thinking of Canadians, who realized that cannabis, marihuana, was not an addictive drug, that it was proved to be different. We warmed up to that, and we responded by introducing the provisions of section 3(1), of the Narcotic Control Act, which made possession of any narcotic punishable by summary conviction.

The courts also responded by getting away from their previous disposition to drugs. In other words, there was a reaction by the courts that they would not impose incarceration for simple possession of drugs, even for heroin, and particularly for cannabis marihuana. Fines became the general rule. The fine was—I am talking about cannabis marihuana—about \$150. That started to drop down.

In 1969, when the Criminal Code was amended to provide for absolute and conditional discharge, judges responded again by awarding that type of disposition in almost every possession case where there was a small quantity and where the individual was a young offender.

They then changed that. They said it was not an appropriate disposition so far as they were concerned. They took the view that that type of disposition must be used frugally, after consideration, and after they had received more information than simple relation to the court that this was a young offender. They wanted to know if he was a responsible person, that he was not playing games with the court.

So judges required that there be presented before the court a presentence report by a probation officer before they would absolutely and conditionally discharge an individual charged with that type of offence. My personal observation is that the judges should not make dispositions of an unusual nature unless they have certain information.

Senator Croll: I appreciate what you are saying. It is my opinion from what I know of British Columbia—and I know something of British Columbia—that the mix of people is about the same as it is in other parts of the country. What brings British Columbia to the point where there are so many offences as compared to other parts of

the country? For instance, Vancouver, San Francisco and New York stand out as the three major centres for drug offences. Yet, in Vancouver the police force is a good one and the law is tough. What brings it on?

Mr. Halprin: I would not ignore the fact that Vancouver, even before 1966, was known to be a place where the drug heroin was available. I do not think I am competent to say that there is a relationship between the presence of heroin in Vancouver and the availability of other drugs, but certainly there was a portion of the community which was used to drugs. Marihuana became part of the drug scene in Vancouver. I think that is a fact of life that should be considered and not ignored, although I do not know how anyone would ever be able to statistically correlate the relationship between the presence of heroin and the availability of marihuana, or other drugs, for that matter. We have problems with the chemical drugs which are of a serious nature as well.

Senator Neiman: Is it possible to get some information as to the standard for prosecutions for the offence of simple possession? Taking Vancouver, Montreal and Toronto as the major metropolitan areas, what quantity do you consider sufficient for the laying of a charge of simple possession?

Mr. Halprin: The prosecution does not instigate the criminal process. Any charge of a useable quantity of the drug is prosecuted. The only decision as to whether or not that case should be prosecuted is whether or not there is evidence to substantiate the charge.

Senator Neiman: What do you call a "useable quantity"?

Mr. Halprin: There is a recent decision by Mr. Justice Berger, which was confirmed by the Court of Appeal of British Columbia, which says that a useable quantity of the drug must be present before there is possession of the drug.

Senator Neiman: Would one cigarette be a useable quantity?

Mr. Halprin: One cigarette is a useable quantity, yes.

Senator Neiman: Would that be prosecuted today, or would the person in possession of one cigarette be simply scolded and sent home?

Mr. Halprin: If the cigarette was taken from a person's possession and there was sufficient evidence to substantiate the charge, that would be a prosecutable offence. Cigarettes are the modicum of use. That is the way you break down the quantity for consumption.

Senator Neiman: We had evidence, I believe, from the RCMP, to the effect that normally they would not lay charges where very small quantities were involved, and if they were to do so, our courts, because of the prevalence of the use of marihuana, would be swamped in terms of volume. It was the view of the RCMP that it would be literally impossible to cope with that type of enforcement through our criminal courts. Our courts simply could not handle the volume. In view of that, I am just wondering whether there is a point where the police simply will not lay a charge.

Mr. Scollin: The police have to exercise some discretion. There are, obviously, circumstances where the quantity is small and which the police are bound either to ignore or

not pursue the matter as effectively as they might otherwise do. Even though there is a minimum quantity that is not to say that the principal of *de minimis non curat lex* applies, because the minimum may, in some circumstances, indicate recent possession of a much larger quantity. In other words, it may not just be a question of possession of a small quantity; it may obviously be a part of the possession of a larger quantity. Unlike the State of Oregon, I am not so sure that fixing a minimum as being the quantity to which criminality attaches is a useful exercise.

Senator Neiman: Senator Javits of the United States has just introduced a bill to the effect that the criterion of quantity should be used. We realize the difficulties in trying to use a criterion such as that, but it seems to be an irresistible conclusion that, in fact, in trying to cope with the marihuana problem in Canada you do use a criterion—not you, necessarily, but the various law enforcement agencies; they do in fact use some sort of yardstick.

Mr. Halprin: That is what I would call a street decision.

Mr. Scollin: The quantity may be so small that one could not honestly and reasonably conclude that proof of its existence could be established. At that point, of course, assuming a charge had been laid by the police, the decision would be not to proceed with it. We only proceed with charges where we consider there is sufficient evidence on which the court can conclude that the accused was in fact in possession of the drug.

Senator Neiman: Can you tell the committee from your statistics, or any studies you may have undertaken, where the line is drawn between a conviction for simple possession and possession for the purpose?

Mr. Scollin: It is almost impossible to put a quantity on it, senator. Perhaps Mr. Landry could speak to this point. He has dealt with many cases where there have in fact been convictions for the lesser offence.

Mr. Landry: Notwithstanding the onus provision, we find it difficult to prove a case of possession for the purposes of trafficking. Before laying a charge of possession for the purpose, we ask ourselves the following question: If the accused takes the stand and says it was for his personal use, what question or questions can I ask him in order to destroy his testimony by having him admit that it was not for his own use, but for trafficking? If we do not have any piece of evidence which allows us to cross-examine the accused properly, we will not lay the charge of possession for the purposes of trafficking. To do so, would be simply wasting our time.

It is very difficult to determine where the borderline is. In some cases, based on the quantity itself, you will know that an accused cannot possibly say that it was for his personal use. If an accused has been found in possession of 10 pounds of marihuana or hashish, anyone who knows the circumstances will conclude that it could not have been for his own use. However, if you are dealing with one pound of marihuana or half a pound of hashish, where do you draw the line?

To give you an example, we had one young chap who was found in possession of one ounce of hashish split in to what is called dimes, or \$10 cubes. These would be cubes weighing one gram each. He had 28 of these cubes all wrapped separately and he was at a pop festival moving about. In that case we charged him with possession of one

ounce of hashish for the purpose of trafficking. We knew that if he took the stand to say it was for his personal use, we could cross-examine him as to why it was split up in the fashion it was, wrapped separately, and why he needed to carry 28 cubes on his person if it was for his own use. In the circumstances which existed, it was evident in our minds that he was trafficking. However, you might find a person with the same quantity, but because of the different circumstances involved you would not think of laying a charge of possession for the purpose of trafficking.

I made a tabulation of the cases we initiated as of July 1, 1972, and the number of those cases which had been completed by April 1 of this year. Many of them are still pending. We have a total of 188 cases in Montreal for possession for the purposes of trafficking in marihuana or hashish. Out of those, 92 pleaded guilty to the charges as laid, and in 35 cases we accepted pleas to the lesser offence of simple possession. There are 61 cases remaining where pleas of not guilty have been entered. Out of those 61 contested cases, only 15 were found guilty as charged, 14 were found guilty of simple possession, and 32 were acquitted completely. Of those who decided to fight the charge, notwithstanding the onus, only 15 were found guilty. I think that is an indication of how the onus provision operates in the system. It will be found that 92 originally decided to plead guilty, so they more or less, if I say so, agreed with our judgment that this was a case of possession for the purpose of trafficking.

Senator Neiman: You have brought up the question of onus. Would you be very unhappy if we recommended that that reverse onus be removed?

Mr. Landry: It is not a question of my being unhappy. I think you honourable senators, and the government will have to ask yourselves, when we find that many alleged traffickers go free, what the public will think. That is another question, which you will have to answer. I only apply the law because it is there. If I could give my personal opinion, I would say that the law should remain as it is, because it operates very well. I believe Mr. Scollin would be prepared to give you some examples of the implications of removing this onus, because it should not be believed that this reverse onus exists only with respect to drug offences. There are many other areas of our law, in the Criminal Code, where the reverse onus exists. Someone sitting behind the wheel of a motorcar after having drunk alcohol is presumed to be in control of the vehicle, and is presumed to have entered the vehicle to put it into movement. That is a reversal of onus; he must prove that he did not enter the car to put it in movement. That is right in the Criminal Code.

Senator Neiman: Surely this goes against the concept of criminal justice.

Mr. Landry: There may come a point when proving what one has in the back of his mind is very difficult. There may be circumstances in which you may draw certain inferences. What we are telling the court here is that it should draw those inferences unless the accused demonstrates that it was not for the purpose of trafficking. I think Mr. Scollin has some examples on that.

The Chairman: Before Mr. Scollin resumes, I have one question for you, Mr. Landry. You have been talking of trafficking. Do you draw a distinction between commercial and non-commercial trafficking? I have asked this

question of other witnesses. We have been told that at a "pot" party, as they are called, if one kid hands a cigarette to another kid he is trafficking.

Mr. Landry: He is by definition, because giving is trafficking. However, one should not dramatize too much the effect of such law. You might eliminate the word "giving," and it may be eliminated in the bill; I am not too sure.

The Chairman: It is not eliminated.

Mr. Landry: Mr. Halprin has seven years, experience in Vancouver and I have ten years' experience, I have been in Montreal since 1965 and have lived through all these cases personally for quite a period of time, and I have yet to see a case where someone has been charged with trafficking because he gave a cigarette or drug to a person. It is very easy to say, academically speaking, that would be the crime of trafficking, but how do you prove it? I have still to run across a case where I have the evidence of such an event happening. It may have occurred rarely in Canada, where an undercover agent was given a drug and the person giving it was charged with trafficking, but it is a very unusual situation for the very reason that you cannot prove that. On the other hand, it may facilitate prosecution in certain circumstances, where people could easily defend themselves by saying, "I did not intend to sell it. I had five pounds but I only intended to give it to friends from time to time." By having the word "give" in the definition of trafficking, that would not be an excuse on a possession for the purpose of trafficking charge. I have yet in my jurisdiction to see a case for a straight offence of trafficking by somebody giving the drug to another person, because you never get that. I have never heard of such a case happening.

[Translation]

Senator Asselin: But it can happen.

Mr. Landry: Yes, but the victim who receives the drug won't go to the police to complain and, therefore, no cases ensue because that kind of proof is never available.

[Text]

Senator Laird: I would like to pin down Mr. Halprin on one thing only.

Mr. Halprin: Before you ask that, I should like to respond to the previous question concerning "giving." You understand that sometimes when samples are given prior to the consummation of a large quantity, that is also an offence. Mr. Landry may not have had the experience, but in Vancouver we have had the experience where the giving of a sample of hashish, or in one case the giving of a sample of heroin, was the prelude to the delivery of a larger quantity. In that case we charged both offences. I just wanted to add that. It is not only non-commercial or social giving that is contemplated by the word "give," but it is giving without an exchange of money that may also be objectionable conduct.

Senator Laird: What I was about to pin you down on was this. You made some remarks about the possibility of legislating so that a judge had to give a discharge, conditional or unconditional, which I gather would not meet with your approval, you would prefer to continue the present practice whereby it is in the discretion of the court. Is that so?

Mr. Halprin: Yes. What you have done with Part V of the Food and Drugs Act is to take away the ability of the judge in the first instance to impose incarceration, so you have destroyed his discretion in that respect already. You have limited him to the imposition of a fine, but by virtue of other provisions of the Criminal Code he may make other dispositions. He may suspend sentence, which we have not discussed here. He may suspend sentence with conditions of probation or he may discharge absolutely. To the extent that the judge's discretion has been cut down, I think it is plenty, if I may say so.

Senator Laird: In other words, you would rather leave it as it is so far as conditional or unconditional discharge is concerned—namely, at the discretion of the judge who hears the case.

Mr. Halprin: I think the provisions of Part V at present are extremely realistic. They respond to the situation; they do not over-respond, nor do they under-respond.

Senator Laird: With respect to quantity, there have been discussions of a person being found in possession of a single marihuana cigarette. I seem to recall some testimony in connection with hashish oil, which could be used by dropping a single drop of the oil on a marihuana cigarette, thereby increasing the potency of the cigarette immensely. Is that a practice that you know exists?

Mr. Halprin: Yes, that is a common practice. I also understand that it has also become a common practice to inhale the drug cannabis, or marihuana, and at the same time inject cocaine, so the double usage of drugs is not a situation unknown to the community.

Senator Laird: So we have to be very careful when we consider the question of quantity, because there is that potential for a single cigarette being pepped up by a drop of hashish oil, and having therefore perhaps the potency of four or five marihuana cigarettes.

Mr. Halprin: That is correct.

The Chairman: Mr. Scollin, you were going to say something about the reverse onus, which has bothered members of the committee considerably.

Mr. Scollin: Perhaps I could first respond to Senator Neiman's last remarks. The example Mr. Landry gave was of section 237(1) of the Code, dealing with a man who was in the driver's seat of a car, who has to establish himself out of being in care and control of the motor vehicle. The Supreme Court of Canada in the *Appleby* Case, (1972) S.C.R. 303; 16 C.R.N.S. 35 (1971), considered the standard of proof that was required of him: Did the accused only have to raise a reasonable doubt at the end of the whole case, or was the obligation on him to establish his case on the balance of probabilities? The court held that it was required he establish his case on the balance of probabilities.

Mr. Justice Laskin's comments on this statutory onus in the *Appleby* case—which is similar to this one here—dealt with the manner in which this statutory onus is to be interpreted insofar as it concerns presumption of innocence. He said, in part:

In a more refined sense, the presumption of innocence gives an accused the initial benefit of a right of silence and the ultimate benefit (after the Crown's evidence is in and as well any evidence tendered on behalf of the accused) of any reasonable doubt . . .

What I have termed the initial benefit of a right of silence may be lost when evidence is adduced by the Crown which calls for a reply. This does not mean the reply must necessarily be by the accused himself. However, if he alone can make it, he is competent to do so as a witness in his own behalf; and I see nothing in this that destroys the presumption of innocence.

There are some examples of this in the criminal law which it would be unnecessary and merely repetitious to go through. But if I may, for example draw another instance to your attention in connection with section 94, which deals with having firearms in a car, section 94 provides that:

Every one who is an occupant of a motor vehicle in which he knows there is a restricted weapon

Say, a hand gun.

is, unless some occupant of the motor vehicle is the holder of a permit under which he may lawfully have that weapon in his possession in such vehicle, or he establishes that he had reason to believe that some occupant of the motor vehicle was the holder of such permit, guilty of [an offence].

In other words, the onus is placed on him. Of course, in fairness I might point out another approach that has been taken to onus sections. In a decision of the Supreme Court of Canada in 1968 in the *The Queen v. Tupper*, (1968) 1 C.C.C. 253, 2 C.R. N.S. 35, the Supreme Court held, in connection with possession of housebreaking instruments, that the accused did in fact have an onus, no matter what the instrument was like, to establish that it was innocently possessed.

Subsequent to that, in 1972, the section was amended along these lines:

Everyone who, without lawful excuse, the proof of which lies upon him, has in his possession any instrument suitable for housebreaking . . .

This is section 309. There is also section 310 dealing with coin-operated devices—

—for housing-breaking, vault-breaking or safe-breaking, under—

Previously the provision was to say that he was guilty of an offence. But now we have these words:

under circumstances that give rise to a reasonable inference that the instrument has been used or is or was intended to be used for house-breaking, vault-breaking or safe-breaking, is guilty of an indictable offence and is liable to imprisonment for fourteen years.

So the essential words were then added, to remove the onus from the chap who has, for example, a nail file which under certain circumstances could be used for vault-breaking or safe-breaking—not very effectively, but could be used. It was to remove the onus that immediately fell on the accused, if he had in his possession one of these instruments which was suitable, that the words were added “under circumstances that give rise to a reasonable inference that the instrument has been used” and so on. In other words, there had to be something more than the circumstance of mere possession.

So, in fairness, I point out that the onus, such as the onus here, is used in a large number of cases under various statutes. What I have just read, on the other hand,

is an alternative which has commended itself, in sections 309 and 310, to the legislature.

Senator Asselin: You admit that your interest on this is against the basic concept of the Criminal Code, that an accused is considered an innocent as long as he is not convicted. Do you admit that?

Mr. Scollin: No, I am sorry, I do not, senator. The presumption of innocence is a necessary evidentiary burden that is hallowed by tradition. I do not admit that the presumption of innocence is a presumption of permanent blindness on the part of the goddess of justice. It is clear that on some facts being established a reasonable man can expect a word or two from the chap against whom significant material has been proved. So I must say I frankly do not admit that this in any way destroys the presumption of innocence.

Senator Asselin: But do you admit that the reverse onus does not exist in the United States in the drug law?

Mr. Scollin: I gather that it does not exist there. Whether that has been helpful in their enforcement of drug laws is another matter. One has got to see the effect. Other onuses do exist in the United States. This is one where they have not chosen, I suppose, to see the need for an onus being required. Other onuses do exist in other cases in the United States, the same as they do here.

Senator Asselin: But if the reverse onus does not exist in the United States how is it that they can have convictions for drug abuse?

Mr. Scollin: I have no doubt that the onus is not so absolutely essential that if it were removed all traffickers would go free. Mr. Landry's statistics indicated that only 25 per cent of those who contested and went to trial on possession for the purpose of trafficking charges were in fact convicted. I suppose that was in reliance on the present law where there is an onus. Unless one is prepared to say that the 25 per cent have been improperly, unlawfully or unjustly convicted, one would think that in the absence of the onus perhaps the figure might very well be reduced and we might only have 10 or 5 per cent of convictions. Whether that would be a fact or not, I do not know; but the fact is that it has been used. I am not at all sure what the proportion of convictions in the United States is. I suppose it can be argued that if another country does not see the necessity perhaps it should be questioned here. But since it is hallowed in other areas of the law, without some demonstration of injustice being a result, where there is pretty strong evidence of injustice having resulted, it is not the kind of thing I would be inclined to abandon lightly.

Senator Neiman: Mr. Scollin, several of our witnesses have recommended, and I think I have been persuaded, that there does not seem to be any logical reason for setting up a separate Part of the Food and Drugs Act to deal with cannabis. I think the recommendation has been made that cannabis should be dealt with in the same way as restricted drugs in Part IV. Would you agree with that?

Mr. Scollin: The penalties are different. Some of the offences are different in Part IV.

Senator Neiman: That is the part that baffles me. Why should they be?

Mr. Scollin: I am afraid I have no magic answer to that, senator; I really don't.

Senator Neiman: In terms of danger, as you prosecute for other types of drugs that are simply considered equally or more dangerous—

Mr. Scollin: LSD, for example.

Senator Neiman: Yes—should not the penalties at least be reasonably comparable, roughly, to deal with them on the same basis?

Mr. Scollin: There is logic to that, senator. I am not sure that I can give any very extensive defence of the variations in the penalties, or speak to the reasons of policy that dictated this going into Part V. There is under way in the department—it has not progressed very far, but it will be going ahead—a system under which we are going to review, from a comparative basis, all the penalties under all the federal statutes. As the law grows up hodge-podge, as you know, from time to time anomalies do occur. One session of Parliament forgets what was done ten sessions ago, and to some extent it must be admitted that certain illogicalities have crept into penalties. Sometimes there is \$1,000 or three months and at other times it is \$500 or six months. This effort is going to be made at least to draw these all together so that the question can then be considered whether or not some more rational approach can be adopted, based in a more real way on the opprobrium that society attaches to each particular instance of misconduct.

Senator Neiman: We appear to be on the verge of doing, just that: creating an anomaly in the law by making a difference between them, as things now stand. Perhaps you do, but I do not see any distinction to be made among the offences of trafficking, exporting or importing and cultivation. They are all the same thing: trafficking. Is that not right? That is the offence you are getting at.

Mr. Scollin: Well, importing surely deserves some special mention and special penalty, because without importing there would be a substantial reduction in the amount of marihuana available. So far as Canada is concerned, importing is a basic essential. In other words, if it is not imported here it is not used. So in that certain sense importing should be more heavily penalized.

Trafficking and possession for the purpose of trafficking are equally blameworthy, obviously. It is just that in the case of possession for the purpose of trafficking, the chap has not got around to actually doing what he obviously intends to do. But I can see the difference. If you are talking about comparing Part III and Part IV with the New Part V—

Senator Neiman: Under Parts III and IV the penalties are the same in each case for trafficking and importing, so they do not treat them in law any differently.

Mr. Scollin: No, they do not. I do not think to any large extent that this is reflected in differences in sentencing, but, admittedly, there are what might be called less than apparently logical variations between the penalties.

Mr. P. W. Halprin, Vancouver Regional Office, Department of Justice: Mr. Chairman, the definition of cultivating is different, because cultivating cannabis is cultivating marihuana, which is cannabis sativa L.

Possession is a different case. It is the plant which is defined under the definition of cultivating. Possession is possession of cannabis, marihuana, which is the stems,

leaves and harvested crop. I think that is the differentiation.

Mr. Landry: Mr. Chairman, I want to say that I do understand the questions on comparisons. I do not want the committee to go into other areas and changes of laws, but you know that the medical world has changed its opinion very clearly in recent years about the use of amphetamines and barbiturates. These are now proscribed in Canada, except for certain limited types of sicknesses.

We have now understood what the Japanese understood after the war, what Sweden understood much earlier than we did, about the danger of these drugs. In the medical world there is now almost an equation between heroin, cocaine in some way, and the amphetamines. The question may not be: "Is it fair to have marihuana with the same type of penalties as the amphetamines?" The question may be: "Are the amphetamines properly classified at the moment with the knowledge we have?" My own answer—and in fact we attempt to do this in practice—would be to treat amphetamines in the same way as we treat heroin. It is as bad a drug as heroin and it is as dangerous. I think the medical experts agree on that. So it may be that the question the Senate might wish to ask someone is: "When are you going to reclassify the amphetamines?" Of course, I am not "the legislators."

The Chairman: Thank you very much, Mr. Scollin. On behalf of the committee I wish to thank your associates in the Department of Justice for your presentation today. The committee is adjourned until two o'clock.

The committee adjourned until 2 p.m.

The committee resumed at 2 p.m.

The Chairman: Honourable senators, the last witness before the committee—and we conclude the hearing of witnesses this afternoon—is Mr. Justice Patrick Hartt, Chairman of the Law Reform Commission of Canada, who has given us notes for his presentation, which are before you. I will ask Mr. Justice Hartt to read and comment on the views he is going to present.

The Honourable Mr. Justice E. P. Hartt, Chairman, Law Reform Commission of Canada: Mr. Chairman, and honourable senators—

Senator Greene: Mr. Chairman, on a point of information. Are we to permit Mr. Justice Hartt to complete his reading of the paper before we can get at him, or can we get at him piece by piece?

The Chairman: I have seen how anxious you are, Senator Greene, to get at the witness, but you will not have the opportunity to do that until he has read the whole paper.

Senator Croll: Not fair! Not fair!

Mr. Justice Hartt: May I say, Mr. Chairman, that there is certain material that the Law Reform Commission has put before the committee in the hope that it might be of some benefit with regard to the problem that the committee faces concerning this Act. We have put out several working papers, all of which have been made available to the members of the committee. I have copies of these papers

here, and also several background papers dealing in a general way with some of the basic considerations that have to be applied in terms of an Act like the one that is now before this committee.

Mr. Chairman, there is one other matter which I thought would be of special interest to the committee, namely, one of our areas of work in which we tried to set out what we thought were the proper scope and limits of the criminal law. When I was advised that we would likely be asked to appear here, we made every effort to try to finish that paper. It is in fact now finished, and copies in both French and English have been made available to each member of the committee. I would ask that it be treated at this stage as a confidential document, because it is just now in the hands of the printer and actually will not be available for public distribution for another two or three weeks. If that is an impossible request, well, then, that is fine; but if it can be so treated I would appreciate it at this stage, because, as I say, it is not available at the present time for general distribution.

This document sets out the principles on which we say, at this stage—officially, as the Law Reform Commission—what matters should be considered when the question arises of whether cases should be treated by the criminal law or not, or if they should be treated by some regulatory process, or whether they should be outside the scope of the criminal law entirely. I would hope that any of the senators who have time to read this document will find it of some assistance to them with regard to the problems concerning this Act.

The second document which is before you is our working paper on Imprisonment, which has also not been published yet. It is also at the printers. This document concerns the way we think the whole question of sanctions should be dealt with in the criminal law, and I hope that it also will be of some assistance to the committee. Neither of these papers, as I said earlier, is available for public distribution at the present time but will be in approximately three weeks.

When I was asked to appear here today I thought it might be of some benefit if I tried to bring together some of the things that we have said in our various documents, and therefore I had Professor Fitzgerald—who is with me and who is a senior researcher with the Commission—prepare some notes for the two of us for our appearance today.

I apologize for the fact that at the present time they are only in English. There is a French version that will be available very shortly—I hope some time this afternoon—but I am referring to them only as notes. They are not a brief of the Commission in any way: they are merely to assist me to bring together for the benefit of the members of this committee matters which we have dealt with in several different publications of the Commission. I want to stress that the official views of the Commission are set out in these working papers, and in those alone, and that the notes are merely to help Professor Fitzgerald and myself bring together some of the matters which you might find of interest and benefit.

I am not sure, Mr. Chairman, how you wish Professor Fitzgerald and myself to proceed. We can go through the notes that I have here, or, even though I have learned over the years to be very respectful of the cross-examination of Senator Greene, I am certainly prepared to subject myself to that cross-examination immediately. It is as you wish.

The Chairman: Unless you gave Senator Greene a copy of these notes before you gave them to the rest of us, I do not think he is in any better position than anyone else to put questions; so, if you did not do that, I would suggest that you read and comment on this, and then we will have questions afterwards.

Senator Croll: It goes to show that the chairman does not know Senator Greene.

Senator Greene: I think His Lordship knows that I never prepare cross-examination very carefully at any time, Mr. Chairman.

The Chairman: You mean you did not even read the evidence before you cross-examined?

Senator Croll: It is easier without the evidence.

Senator Laird: Also he has had five minutes to read the brief. That should be enough.

Mr. Justice Hartt: His performance before jurors in the Valley was always devastating, though, Mr. Chairman.

Well, perhaps we can proceed. These notes were prepared by Professor Fitzgerald. I was wondering if he could give a brief summary of them, and then I would be happy to answer any questions that senators may have.

Professor P. J. Fitzgerald, Senior Research Officer, Law Reform Commission of Canada: Thank you, Mr. Chairman. Briefly these notes that have been prepared for presentation here today make one preliminary point, which is that the question of cannabis and the law is, first of all, a question to be determined on evidence; and, secondly, it is a question of what principles to apply to that evidence.

Our presentation is entirely focused on the general principles: it is not focused on the evidence, of which we have not made a detailed study in the Commission, because that is outside our program. It is based on the general principles to be applied, and those principles, as they are set out in these notes, are drawn from five working papers, which I will list. They are: the paper on the Meaning of Guilt; the paper on the Limits of the Criminal Law, which is here in confidential form; the working paper on Sentencing; the working paper on Diversion; and the other working paper which is before the Senate committee in confidential form, the paper on Imprisonnement.

In order to sharpen our presentation of these general principles, we have focused, simply by way of illustration, on one aspect, and that is on the problem of use or possession of cannabis. We divide our presentation into five questions.

First of all, we deal with the general principles that should apply in order to answer the question, should there be any legal control at all of the use of cannabis? Secondly, should there be control by regulatory law? Thirdly, should there be control by real criminal law? Fourthly, if so, what sort of techniques of criminal law enforcement should be used? And fifthly, detailed observations on how Bill S-19 would square with those general principles. Sixthly, we have an appendix on the problem of trafficking. We have focused on possession, but we saw fit to add a few remarks on trafficking.

Turning, then, to the first question: Should cannabis be legally controlled? We draw the committee's attention to the price that one pays for legal control of any activity. It

is a three-fold price. Those engaged in the activity suffer the intervention or the possible intervention of the law against them. Secondly, all of us, many of whom might wish at some time to engage in that activity, suffer in terms of restriction of liberty. Even if we do not want to use cannabis we are restricted in our liberty because the use of cannabis is controlled.

Thirdly—and this is the more general price—there is the cost of setting up machinery to apply the control. The question is: Is the use of cannabis something that it would be wise to regulate and control by law? Is it something we would be wise to pay a price for controlling? This would stress again the question to be determined on the evidence, and on this we would draw the committee's attention to two facts. First of all, in our society we do control and regulate many things—such as, alcohol use and traffic—and there would be nothing peculiar necessarily in wishing to have some sort of control over cannabis use. The second point we would draw the committee's attention to is the many different methods of control: For example, there is licensing, state distribution, as in the use of alcohol, or the criminal law.

From the beginning of our studies in the Commission we were compelled to draw a very clear distinction, in dealing with the criminal law, between what we have come to call the "real criminal law" and what we have come to call "regulatory law." The real criminal law, as we see it, and as outlined in our paper, "The Meaning of Guilt", is that law which deals with very serious and obviously very wrongful acts—those things which Sir James Fitzjames Stephen, from whom our code is derived, calls "those things that really ought not to be done," things like murder, rape and robbery. On the other hand, there is a vast number of regulatory offences in the area of health, welfare and all sorts of activities where society and the public interest has decided to control and to regulate.

We turn then, first of all, to the question as to whether regulatory law would be a suitable means for controlling the use of cannabis. Regulatory laws operate, as we see it, simply by way of deterrents, a disincentive. There again arises a question on the evidence: Are the effects of cannabis such that it should be regulated, that it would be wise to use regulatory law to deter cannabis use? If the committee were to come to this conclusion, then we would enter three caveats. First of all in regulatory law, as we see it, there is no element of shame, stigma or turpitude. These are not things which are intrinsically wrong in themselves and should not be done; these are things of which society is saying that it is better perhaps in the general interest that we should not do this. So there is no turpitude there.

Following from this, there is a second point: If there is no turpitude or intrinsic wrongfulness in regulatory offences, then that form of sanction which is designed particularly to impose shame and stigma—that is to say, imprisonment—should be rigorously excluded. We have put forward in our paper, "The Meaning of Guilt," and in our other paper, the view that prison should be excluded from regulatory offences. If therefore it is felt that regulatory law should concern itself with cannabis use, then we would urge that imprisonment be excluded.

Then, thirdly—and this is a different point—many of the regulatory offences that we have in our law are offences of strict liability, offences where the offender can be guilty without any wrongful knowledge or intention on his part.

We have concluded, and so recommended in "The Meaning of Guilt," that a just and reasonable system of law has

no place whatsoever for offences of strict liability. We would urge therefore that if regulatory law is chosen as a means of controlling cannabis use, then that regulatory offence in this regard should not be regarded as an offence of strict liability but should allow as a minimum a defence of due diligence.

Turning next to the question of real criminal law, is there a place possibly for offences of cannabis possession or use within real criminal law? Here again we would stress four things. First of all, once more, the question of price. We have seen that there is a three-fold price to pay for any legal control and that three-fold price, we argue, is heightened and sharpened in the case of criminal law enforcement, not just a question of legal intervention, loss of liberty and economic cost, but now a question of people really getting hurt, if you make cannabis use a real crime where people are liable to arrest, charge, conviction, possibly prison, shame, stigma. Secondly, the loss of liberty is much greater. And, thirdly, there is not now just an economic cost, but there can be an important social cost in terms of resentment and even alienation, especially if a large section of the population were to take the view that cannabis use was not wrong in any way.

Because of this enormous price that one pays for the use of criminal law, the Commission has taken the view and urged that the criminal law be looked on as a very blunt instrument to be used with considerable restraint, whether one is talking about the criterion of guilt or whether one is talking about the limits and scope of criminal law or the techniques of enforcement and the types of sanctions. We urge all the way through that restraint be the watchword here.

Nevertheless it may be that, on the evidence, the committee might think it justifiable to pay this price with respect to cannabis use. When is it justifiable ever to pay this three-fold price? In our view, if one of two conditions is fulfilled. The first is that the activity that one wishes to control by criminal law is an act which is very wrong—and usually this will be an act that is harmful to others. If cannabis use could be shown to be very harmful to others—that is to say, people other than those who are using it—a case might be made out for imposing the real criminal law. It might even be that there could be a case for imposing the real criminal law even if cannabis use were not harmful to others than the user, but if it was very harmful to users who fall into a special category—such as, juveniles, immature people who might need special protection. Here again we stress that it is a question to be determined on the evidence.

An alternative condition which might justify paying this price is if an activity constitutes a serious threat to essential or important social values. It is clear to us that any form of social life means commitment to certain shared values. Some of these values are essential to the functioning at all of society—such as, respect for human life and the integrity of the person. A society that did not accept, for instance, that violence was out could not survive as a society. Over and above one or two key values like that, there are other values which are not essential for society but yet may be very important. The value of liberty is not essential to a society, but it is essential to the form of society that Canada has today and wishes to maintain. The question is whether cannabis use could be shown to be a threat either to key values like truth and non-violence, or values which are not essential but which are, perhaps, very important in our society—values like per-

sonal freedom, privacy, human dignity. If either of these conditions can be fulfilled, then it might be justified to pay that price because that brings us to the benefits we gain from using criminal law.

Usually it is argued that criminal law provides two sets of benefits.

First of all, if an act or activity is one to be discouraged, maybe criminal law can operate to prevent it being done through techniques of deterrence, reform and so forth. How far criminal law can be successful, of course, is a point which criminologists are continually discussing and upon which they are not agreed. Secondly, if values are threatened, criminal law, through the criminal process, the criminal trial, acts of Parliament and statutes, can serve to articulate, reinforce and bolster those key or otherwise important values.

Concluding, then, on the question of real criminal law, in our view, given the evidence warranting this, it might be justifiable to pay that three-fold price and use real criminal law against cannabis use if one of three conditions were fulfilled. If cannabis use causes serious harm to third parties or serious harm to certain users—i.e., children—three might have to be a restricted crime. Thirdly, if cannabis use constituted a serious threat to values, if one did decide to use the real criminal law, it brings us to the fourth question, that of enforcement. As I said, the commission urges that the key watchword in all of this is restraint—restraint in the scope and limits of the criminal law, but restraint in the sense that wherever possible we feel that cases, and this applies to cannabis cases, should be diverted out of the criminal justice system to some alternative proceedings. If possible, such offences and such offenders might be absorbed by the community. There could be techniques of police screening to keep these from coming before the court. Crown attorneys might strive to settle these cases at a pre-trial level, rather than going through the full trial procedure. Even if they did go through the full trial process, we would stress the use, wherever possible, of alternative sanctions—that is, certain sanctions alternative to imprisonment.

Fifthly, the detailed observations on Bill S-19. I do not mention these here, because it is difficult to summarize them, but they are in the notes for presentation.

I end by turning to the sixth matter, trafficking. If the evidence was such that it was thought that possession or use of cannabis should be a crime, it would almost automatically follow that trafficking should also be a crime. The more difficult question is the converse. Suppose on the evidence the Committee thought that possession and use should not be a crime, would it then follow that trafficking should not be a crime? This is again a question for evidence, because the effects of trafficking might well be different from those of possession and might raise different considerations.

We would simply draw the attention of the committee to three aspects: First of all, the economic problem. If we make cannabis use free, but prohibit trafficking, we then increase the demand for cannabis and decrease its supply. This means that the price of cannabis is increased, which makes it more profitable to deal in trafficking, which might be inimical to the goal of discouraging cannabis use. Secondly, a logical consideration. Maybe there is some logical inconsistency in making cannabis use free and cannabis trafficking not free. On the one hand we would be saying to the citizen that he is free to use cannabis; on

the other hand we would be saying that we are making jolly sure he cannot get any. Yet—and this is our third point—it is not a complete inconsistency. It might well be that the committee might think, on the evidence, that it was only right and proper that citizens should be free to use cannabis. The committee might also take the view that it is only right and proper that citizens should also be free from being pressured into using cannabis. The committee might think, therefore, that while it did not wish to recommend legislation, or any criminal legislation, against cannabis use, it did wish to legislate against pressuring people, especially when the pressure is done for gain in trafficking in cannabis.

That is a short summary of the general principles which we thought might usefully be applied in this matter. Thank you.

The Chairman: Thank you, Professor Fitzgerald. Senator Greene?

Senator Greene: My Lord, bearing in mind that the Le Dain commission, as I understand it, found that the prime drug problem in Canada is concerned with alcohol, how do we answer the query, of that segment of the population which is composed largely of a particular age group, that their particular item, cannabis, deserves to have all the machinery of the criminal law called upon its use, while the major problem which the Le Dain commission found, alcohol, will remain perfectly legal as far as possession is concerned?

Mr. Justice Hartt: Well, senator, I do not believe that I can answer that problem, but I can make some comments with regard to it. First of all, in my opinion, one way in which it may be logically answered is in the application of the principle which we have endeavoured to set out in the paper on the limits of the criminal law, which you have before you and which Professor Fitzgerald summarized in terms of principles. If it does not apply in terms of those principles as something which should be appropriately dealt with, either by the criminal law under the criteria set out in it or by regulatory law, I do not think your question can be answered. If it is simply an arbitrary distinction drawn by the legislature, obviously there will be alienation resulting from that, as we state in these notes. If we are to apply the criminal law, the Commission says we must apply the principle of harm. There must be serious harm caused to other persons or, a different category possibly and undoubtedly with regard to children and the possibility of serious threat to important values in our society. We take the position that that is the only time the full impact of the criminal law should be imposed. However, other considerations, as we say, apply in terms of a regulatory procedure, by means of which something is being done for a different purpose altogether.

For those reasons, all I can say in answer to your question is that we urge the consideration of the principles which we have set out in determining what, if any, type of control should be applied in terms of cannabis. I cannot answer it in terms of the evidence, senator, because I have not studied the evidence and we are not here for that purpose. We can only set out what we consider to be the proper principles against which you could weigh the evidence. From the very beginning the Commission has taken the position that we consider the basic aspects of the criminal law and put a great stress in terms of that law on the factors underlying important values in our society. However, those values cannot be determined by experts;

they are determined by the public and their public representatives in Parliament.

Senator Greene: Your recommendations then, I gather, come to no conclusion as to whether the criminal law is the right club to use if the evidence is that it is an undesirable act. You point out options, but come to no conclusions?

Mr. Justice Hartt: We do not attempt to assess the evidence, senator. There is no way that we can do that. We were not asked to do that, and it is not within the scope of the work we have undertaken. However, we say that it cannot just be looked at in some arbitrary fashion. There must be a set of principles against which the evidence will be applied. We attempted to set out those principles. Then, it seems to me that if you can do that, you can justify treating differently different substances if the evidence warrants it when you apply it against the principles which we have set out.

Senator Greene: Without pre-reading your paper—No. 10, I believe it is—which is now being published and which defines the limits of the criminal law, has it been the finding of the Commission and its researches that using the criminal law to do things that perhaps should be done otherwise is one of the elements which has brought our courts into question as an institution, particularly by the young people of our society? Is the misuse of the criminal procedures one of the elements you have found has rendered the courts an invalid institution or an incredible institution to many of our people?

Mr. Justice Hartt: I am not really prepared to accept that the courts are an unacceptable institution in our society—far from it—but I do think that the over-use of the criminal law has tended to bring some discredit upon those courts and upon the entire administration of criminal justice.

The first thing that is always thought of, in terms of any type of governmental control, is to make it an offence. If you want to be real soft about it, you make it an offence which is punishable under summary conviction—which is something a little less, but if it is using the criminal law, it is a criminal offence. I do not think there is any doubt that we over-use it. We do not look to other ways. That is really the whole impact of the work, so far, of the Federal Law Reform Commission—which is to say that the criminal law has to be used with restraint, and we must develop and look to other ways of exercising some degree of regulation or of control other than the criminal law.

That is why we recommend, in our paper, under “Diversion,” that we should look to community resources and not automatically lay a charge. Why not turn to what community resources are available and not lay a charge, and let the community itself absorb many of the problems for which we now turn to the criminal law? If we use it at every stage of the proceedings, there is an onus on the prosecution to justify going on to another step—otherwise get it out of there and use procedures other than the criminal law.

Senator Greene: Mr. Chairman, I shall try not to make that inevitable mistake of inept counsel, asking that one more question. Thank you.

The Chairman: Knowing your views, Senator Greene, I know why you do not ask any more questions after hear-

ing what Mr. Justice Hartt has just said. You do not disagree with him.

Senator Asselin: I do not know whether I have followed well the explanation given by Professor Fitzgerald regarding use of cannabis or hashish as a crime. I would like to have his comments on the consequences for someone who has been convicted of simple possession. What do you think about that?

Mr. Justice Hartt: The question is framed in terms of the old procedure that we are trying to get away from, of simple possession and automatically laying a charge. I happened to be here this morning and heard one of the prosecutors say that in every case where there was a measurable amount of cannabis a charge is laid. We say that is basically wrong procedure to adopt, that we should look at all the alternatives. We set them out in our "Diversion" paper. You only use the criminal law, we suggest, as a last resort, in the most serious cases. We should see whether the community can absorb those—give the police discretion, which they have, not to lay the charge, but to take the person home or to a church or social group. We should use what resources there are in the community to deal with the problem and not automatically turn to the criminal justice system. If you turn to the criminal justice system and end up with a conviction, you end up with the problem of what you do with the person you have just convicted. The first thing you want to do is to get rid of the record which you have undertaken to give him. It seems to me that you just cannot look at it in a simplistic way, if the traditional way. You have to look at the criminal law, we suggest, in the way we have set out in the papers, as a matter that is used only as a last resort, in very serious situations, and so far as possible you try to use other mechanisms for dealing with situations.

If you go through with this, senator, and you end up with a conviction for a simple possession case, you can say you were not convicted when you were. Everyone knows in the community, especially in a small community, that you were convicted. What is the benefit of putting in an act that when you are asked, "Were you ever convicted?", you can say "No," when, in fact, you were. Parliament can do that, of course; but if you want to do that, why did the machinery bring the person through the whole criminal justice system into a position where he was convicted in the first place, when there are many other methods of coping with and dealing with the situation?

Senator Laird: Actually, Senator Asselin jumped the gun on me in one respect. Your notes would lead one to conclude that you would agree that philosophically, for example, all alcohol, all tobacco, all marihuana should be prohibited. I presume everyone would agree with that philosophically. But you do realize that we have to take a pragmatic approach. We have here Bill S-19, and our big problem is to determine what to do with that bill to minimize the use of marihuana—and perhaps, incidentally, it will be my painful duty, as I have had to do on other occasions with witnesses, to draw to your attention that certain senators have been known not only to use alcohol but also to smoke tobacco. However, with that background, and bearing in mind that we must take a pragmatic approach, you were here this morning, Mr. Justice Hartt, when there was a discussion about the problem of conditional and unconditional discharges. The corollary to that question was whether or not the present system, which leaves a discretion with the court, should be

replaced by some legislative enactment making it obligatory on the court to give such a discharge. Would you be willing to comment on that?

Mr. Justice Hartt: I would certainly be willing to comment on it, senator, but, if you will allow me to do so—I am not trying to slide off the question—what I am saying is, you cannot answer the problem with simple legislative enactments. That is why, when we started this Commission, when the decision was whether we should amend some acts which are presently in force and make them read some other way, we decided we could not cope with the problem in that way. You will not solve all of the problems dealing with marihuana, with respect, in one act or one section. Again, I say you have to go back and look in terms of the whole process of what we are trying to do, and use that process only in a very limited way; otherwise you will end up with the problem that you referred to with regard to criminal matters.

At the Commission, we look upon the discharge by a judge really as just the ultimate in the diversion situation. The person who is found in possession of some marihuana gets into the hands of the police. The police can lay a charge or not, as they see fit. They can take the person involved to his home or obtain some other community assistance, or they can lay a criminal charge. When the charge is laid, the prosecutor can then proceed with it or not, as he sees fit; he has a discretion. All the way along the line there are safeguards built in, so that if those discretions are exercised, the matter can be taken out of the criminal process right up to, now, the judge himself. At the end of the trial the judge can say, "Despite all the evidence, I am not even going to go to conviction. You are going to get a conditional discharge." That is really diversion by the judge. He is diverting the matter away from the end of the criminal process. That is unquestionably a very salutary section to have in there, and it is used a great deal. Should we make it mandatory that it be used? I do not know. There are problems there. As the gentleman said this morning, you do not know what size of concept you are dealing with. You do not know what the evidence is. Here again we are dealing with the whole question of judicial and public education. It is not just a question of what can be done, senator, in my opinion, by one legislative enactment.

Senator Laird: Well, perhaps you would not mind commenting on this, if you feel like it, specifically: You suggested some form of alternative sanctions in the event of conviction. Are you in a position, for example, to comment on whether compulsory education in the harmful effects of marihuana would be a suitable alternative sanction?

Mr. Justice Hartt: I think the alternatives, senator, are limited only by our imaginative approach to the problem. Why not educational sanctions? We deal with this in considerable detail in our working paper on the general principles of sentencing. We talk about the possibilities of work orders and the much more extensive use of fines. As you will read in our documents, however, we are very much against the option of a fine plus, in the alternative, a jail term. I think that is basically unfair. It means that you are in fact incarcerating people for being poor. We recommend day fines; in other words, that the fines be set in terms of the financial capabilities of the person who is being fined, and that in no circumstances should there be jail in the alternative to a fine, except in a situation where the ability to pay exists but there is a refusal to do so.

I say, therefore, that there are many alternative types of sanction that can be considered that are much more appropriate and much more socially beneficial than the use of incarceration, or the other more serious modes that we use today.

Senator Croll: The paper that you present to us appears to have had considerable study. Looking at it as quickly as I can, I must say that I am impressed with the amount of knowledge that is contained in your approach.

I have quickly rushed to page 23. I will just read a little bit of it, and I do not think I will get it out of context. You say:

Surely society could justifiably say: "Let's discourage trafficking, Adult citizens should be free to use cannabis, but all citizens should also be free from being pressured into using it, especially if they are children."

I could not agree with you more there. Let us go on to the last paragraph. You discuss other things, and then you say:

What this suggests is that a distinction can be drawn between casual, non-commercial trafficking and organized trafficking for gain. We could prohibit selling without prohibiting giving, though not necessarily for children. Whether such distinction should be drawn, however, can only be determined on the evidence.

Now, you are not new to this, you have had a look at the Le Dain commission report, and yet your trained minds say that we ought to have a further look at the evidence, despite what was said in the Le Dain commission report and what we have heard here. You must have heard some of what we have heard here from time to time.

My question to you is just this: Is the evidence all in? Can take precipitate steps at this time, in your view?

Mr. Justice Hartt: I think it is a pragmatic matter. A step has to be taken at the present time.

Senator Croll: But I am talking of steps outside what is contained in this bill. It does not trouble me to support this bill completely. I am wondering, however, whether there is sufficient evidence to do more or less?

Mr. Justice Hartt: Senator, I am really not in a position to answer that. There is no way that I can make a comment on the merits of the evidence. I have not studied it, and I could not speak on behalf of the Commission in terms of it. There is no way in which I can answer that question. I am sorry, but there just is not.

Senator Croll: You see, sir, the evidence we have had here was pretty well prejudiced, in the sense that the people giving it had made up their minds and had approached it from a certain point of view. There have been various points of view here that we have had expressed before us from intelligent, capable people. We, on the other hand, are not particularly trained to weigh evidence; we are not particularly trained in this field; yet we have to make a decision. What I am asking, really, is, from what you know of the kind of evidence we have, are we prepared to make such a decision? Do we know all there is to know about the problem, or do we know so much that we ought to be boldly stepping into it?

Mr. Justice Hartt: Well, certainly the Le Dain commission went into great detail. There is more evidence becoming available all the time about these things. Sociological stud-

ies, and so on, are becoming more and more sophisticated, and we are getting more evidence all the time; but it is like all other things in the law, I suppose, senator. A case comes before a judge and it stops with him; he has to make a pragmatic decision on what is before him.

Certainly, I would think that all the relevant material that is available at the present time has been put before the Le Dain commission and this committee, and it is a question now, I think, of trying to cope with the situation that faces the committee. I cannot answer you, but I can say that I do not think, with respect to the committee, that it can be answered in one act, or in a series of sections. That is really my message on behalf of the Commission here, that it is a much wider thing than that. It has to be looked at in a much wider perspective, and we have to try to apply either the set of principles that we suggest, or maybe another set that can be devised by some other group; but we must still do it in terms of principles so that there is some reality behind it, and so that it is not just an arbitrary thing in terms of which we treat one substance one way, and another substance, which has, superficially at least, the same characteristics, in another way.

Senator Croll: Well, there is principle behind this bill.

Mr. Justice Hartt: I assume so.

Senator Croll: We are doing a little twisting on it ourselves, here, as senators. We have to live with the results of what we do, and so we are trying to twist it a little to see if we can get off the hot seat, particularly as it affects youngsters, and that sort of thing. There is principle behind the bill. My own feeling is that, whereas we might well endorse this bill, we may not be ready for two or three years yet to make a deliberate decision.

Senator Greene: A supplementary question, Mr. Chairman.

On the point you made, My Lord, with respect to the decision as to whether to prosecute or no: In current criminal procedures, forgetting the bill for a moment, is that normally strictly the decision of the police and the prosecuting authorities, including the crown attorney, or is there advice available from people such as probation officials, social workers, and so on, as to whether that decision to prosecute should be made or no? Is that completely a police decision at the present time?

What I have in mind is, could we involve some procedure whereby there would be help for the prosecuting authorities from medical people, social workers, et cetera, as to whether this would be a good case for prosecution and to take to court, or whether the great club of the criminal law should not be used in this case? Is there precedent for that kind of help being given to the prosecuting authorities, or is it strictly a police decision under present criminal procedures?

Mr. Justice Hartt: I think at the present time—and I will ask my expert to my right to comment on it very shortly—that it is basically a police decision, and I doubt if very much could be done, again by way of legislation, to try to bring other persons into this; but I would like to see that done in an informal way. There should be an awful lot more interrelationship between the different sections of the criminal justice system—between the police and the social workers, and all the different groups. To a great extent at the present time they operate in isolation, and there should be a much greater give and take between the groups so that police would have more of an idea what

cases would be appropriate for prosecution and what cases could be dealt with within the community and within the resources available in the community. So I would agree with you that that would be a very good thing to do, and I do not think it can be done by legislation, because I think it is a question of education within the criminal justice system.

Professor Fitzgerald: I think that is right. In putting forward the view that the criminal law would be used with restraint, of course the corollary to that is that we need some alternative. And when we are talking about using some alternative to prison and fines, we stressed on page 17 that this might well require new administrative machinery. I think what the senator is pointing to is the possibility of trying to create new administrative machinery to assist in this undertaking—in the administration of the criminal law and to assist a diversionary technique.

Senator Greene: But those procedures involving social workers and medical and psychological advisers come in after the person has been convicted.

Professor Fitzgerald: And your point is that perhaps the right place for them to be brought in is before, and I think that would be in line with the Commission's thinking on these points.

Senator Greene: The problem, of course, is that once you bring in the machinery of the criminal law, the first act is arrest and then the police have to justify the arrest so their thinking is, "We had better lay a charge."

Mr. Justice Hartt: There is always a competitive spirit among the lawyers. The senator and I were in those courts together many times. It just carries on until, as I said to Senator Asselin a little while ago, you end up with a convicted person and you really do not know what to do with him, and it all came about because somehow or other this machinery got into operation.

Senator Greene: I take it you are speaking of the ones I defended and not the ones you defended!

Senator Neiman: Mr. Justice Hartt and Professor Fitzgerald, I agree with the points you put forward in these papers. I think that what we are really faced with here, as a committee at the federal level, is the question as to how we could bring some of those alternative procedures into play, because it seems to me, and I may be wrong, that we are constantly running across the jurisdictional borders. It is one thing for us to say that we would like all this, and that this is the ideal solution, but it is very difficult for us at this point and in this place simply to find all the answers or to try to implement the answers. I think today we are not ready in our society, and I do not think this committee is ready, to say that we should legalize cannabis. So we have to try to find something to rationalize the prohibition we are putting on it. This is what we are looking for. So, how can we use some of your suggestions at the criminal law level without infringing upon provincial jurisdictions and administrations to implement some of the suggestions that you have put forward?

Mr. Justice Hartt: Well, senator, first of all I must disassociate myself a little from your suggestion that this is an ideal solution. There are no ideal solutions; there are some that are a little bit better than others, but that is as far as it goes. But, certainly, if this very august body were to give some support to the views expressed in our documents, I

think it would go a long way to creating the type of atmosphere in which the restraint which we advocate for the criminal law would be more likely to be exercised. It is not something that happens overnight. The myths that have been created in terms of criminal law, and what it can do and what it cannot do, were not created overnight, and so they will not be destroyed overnight, but they can be reconsidered and looked at in a new light, and that is what we are really suggesting. If the committee sees fit to use criminal law or regulatory law, it still is not inconsistent with that, that the idea be advocated that there be extreme restraint in the application of the law. In other words, it can still remain either an offence or a crime, but there can still be discretion exercised and restraint used in the application of the law.

Senator Neiman: Thinking in terms of regulatory law, do you think that we could still use some form of that within the two drug acts we are dealing with today whereby simple possession could be considered as one type of an offence quite easily while the other stayed at the criminal level with more serious sanctions?

Mr. Justice Hartt: Yes, clearly. And if you applied the principle set out on the application of those and the evidence before you, I am sure that this would be a viable choice that you would have.

Professor Fitzgerald: I just wanted to add two things, Senator Neiman, to underline what you have said. There is always this problem when a thing is a crime, that the unfortunate result is one of criminalization. We would stress two things, that to take cannabis use outside of the real criminal law is by no means legalizing it. In our "Limits of Criminal Law" paper which focuses, for example, on obscenity, we point out clearly that there are many ways we can control obscenity, taking it outside the real criminal law without necessarily condoning it or legalizing it. I would make the point that if you leave cannabis outside of regulatory law, you are by no means legalizing it.

The second point I make is that one of the things that very much impressed and disturbed the Commission in its word on sentencing is the vast number of people sent to prison for petty thefts and breaking and entering offences, and we have recommended that people not be imprisoned left right and centre for that, and that the criminal law be used with restraint. But that is not to say that we are advocating the legalization of these offences.

Senator Greene: Professor Fitzgerald, in your original presentation today did I understand you to say that the social penalty involved in being charged, not to speak of being convicted, of possession in Vancouver or Montreal might be very different from the social penalty involved in the same charge in Rivière-du-Loup, Murray's Bay or Penetang?

Professor Fitzgerald: No, I do not think, with respect, that we meant to make that point. I think we were saying, and perhaps not very well, that the social cost to the individual who is charged is much greater if he is charged with a real criminal offence than if he is charged with a regulatory offence. In talking of the social cost, however, in non-economic terms, we were thinking of the wider community, and we were thinking that whereas under regulatory law, where you might have something like driving without a licence or broadcasting without a licence, the social cost here is mainly due to the economic cost of

administration. But when you make a thing contrary to the criminal law, the social cost is now not only the economic cost of administration but also the social illwill you may breed if a large large segment of the population feels it ought to be able to do this thing and that there is nothing wrong with it.

I refer to the large illwill that you may create if, for instance, 30 per cent of the people think that they should be able to smoke cannabis in the same manner as the other 70 per cent consume alcohol. That was our point with respect to social cost. I just cannot answer the other question.

Senator Laird: Following that up and taking, I must admit, a very practical point of view and accepting as a premise that the use of marihuana cannot do any good and, undoubtedly, ostensibly would be positively harmful, I point out that one of the greatest problems we have had to face is the opinion of the public that by means of Bill S-19 we will legalize marihuana. Consequently, this defeats the purpose of any act which creates any social misapprehension as to what is being done. Therefore, we face that much more difficulty in minimizing the use of something which we consider to be harmful. The problem is, how are we to overcome this sort of thing, other than by education? Is there any other way?

Professor Fitzgerald: In an endeavour to answer that, I would have to agree that in my opinion one of the points the Commission would make in this respect is that when we face a problem, be it obscenity or marihuana use, and if society does by and large perceive that as a problem, the question is, what is the best thing to do about it? In our view, looking at the criminal law, usually such treatment of its use is the worst thing to do about it. If we desire to stop people smoking cigarettes, drinking alcohol or using cannabis, or whatever it is, passing a law and putting them in prison is not the best way to do it.

Senator Laird: We found that to be true with respect to alcohol. However, the fact is that in the United States there must appear on cigarette packages and in tobacco advertising a notice that the substance has been found by the surgeon general to be harmful to health. That does not cut down the use of the substance, so what do we do?

Mr. Justice Hartt: Senator, I wonder whether we should always bear in mind that we should be controlling other people in some way, or that we know what is best for others in enacting legislation or exercising some degree of control. It is fundamental, in my opinion, to the position we took in our papers on the use of the criminal law that at least harm to the user must be with reference to a child or someone who must necessarily have some type of protection. That probably is not one of the types of harm in connection with which the strict criminal law should be used. There are other reasons for the use of regulatory law, but that is a different thing altogether. The regulatory law is solely a disincentive in an attempt to persuade the people that it is not the proper thing to do. However, there is no stigma attached to it and these basic principles must be incorporated into the distinctions. People do not know what particular acts provide, because there is really no basic principle behind them. It is always a mixture of things. A summary conviction offence is really not as important as an indictable offence, but an offender can be sent to jail and receive a criminal record for such an offence. So how is it not as important as an indictable

offence? Because the lawyers say it is, I guess. It is easy to understand why the public is a little confused, because I am not sure that it is set out in terms of principle. That is the direction in which we would like to see it go. Although our suggestions might not be the proper ones, they are just the best we can do. I would like to see more and more thinking and probing into that type of approach to the criminal law, so that we may eventually arrive at a solution.

Senator Godfrey: Mr. Justice Hartt, I agree thoroughly with your statement at page 18, that imprisonment must never be used as a punishment for being poor. We are considering this question of possession and the fine and imprisonment. If the fine is not paid, one of the arguments seems to be that if there is not some kind of a threat, such as imprisonment, fines will not be paid. This is really an attempt to utilize the collection process. In your investigations did you find that, unless there is the alternative of imprisonment, fines do not get paid? Is that a real problem?

Mr. Justice Hartt: That is the traditional answer always put forward. We just do not happen to accept it. We say that if the fine is the appropriate penalty, then imprisonment is not the appropriate penalty; otherwise, the person would have been sent to jail in the first place. If a fine is the appropriate penalty, we have machinery in our law and we should have more administrative machinery established within the courts for enforcing those fines, the same as with respect to any other monetary penalty in law. However, the alternative of imprisonment should never be available; it should be regarded as a last resort, in the event a person wilfully refuses to pay a fine—in other words, when he has the financial ability to pay it, but refuses to do so. There must be an alternative penalty for the use of the court, otherwise the sanctions would be ineffective. But in the event a person cannot pay a fine, jail should never be the alternative, because in that situation we are in fact sending a person to jail because he is poor.

Senator Godfrey: You say that if this new approach were followed, as suggested by you, we would require new administrative machinery?

Mr. Justice Hartt: Yes.

Senator Godfrey: Are you suggesting that if we amend this act to provide that there will not be imprisonment as an alternative to fine, that would be administratively unfeasible because of the lack of administrative machinery to collect the fine?

Mr. Justice Hartt: That is a problem in some areas, yes. It was included to make our point of view realistic, that we realize that there should be machinery established to cope with that problem. This is all part of our recommendation, that a person would be fined on a day fine bases related to his income, so that the fine would vary depending on the ability of the person to pay. Then it would only be an alternative of jail if the person refused to pay. If there were no money available, we suggest the possibility of considering work orders, or some other method of payment of the penalty imposed.

Senator Godfrey: I am not a criminal lawyer, so I am seeking a little information. Can the courts not collect a fine by way of garnishment or execution, as in the case of civil debts?

Mr. Justice Hartt: The courts do not have to do that, because they can send the person to jail. However, if that alternative were not available to them, the government would have to recover the fine in the same manner as I would recover it in the case of a civil debt.

Senator Godfrey: In other words, it is possible for the government now to recover a fine by way of garnishment and execution and the usual procedures which are open, such as examination of judgment debtors?

Mr. Justice Hartt: In my opinion, that is theoretically correct, but it has never been done, or had to be used, because the alternative has always existed.

Senator Godfrey: Our criminal law always provides that alternative?

Mr. Justice Hartt: I do not know of any situation in which it does not.

Senator Godfrey: What about highway traffic offences?

Mr. Justice Hartt: It applies also to them; it is a method of enforcing payment.

Mr. Chairman, it has been pointed out to me that in our paper on fines we say that in one study 40 per cent of people imprisoned for not paying fines made partial payment either before or while in custody. So presumably they were trying to pay it; they did not want to go to jail. One inference which can be drawn from that is that they ended up in jail because they did not have the money to pay it.

Senator Godfrey: In the old division court procedure, when I was a student, there was the alternative of putting a man in jail, in effect, for even a civil liability, if in contempt of court, if the judge felt he had the means but was wilfully not paying. So there is a precedent.

Mr. Justice Hartt: I think you are right, senator but that applied only in circumstances where the judge was satisfied that the person wilfully and intentionally disobeyed the order.

Senator Godfrey: That is right.

Senator Greene: Did the Commission, in its inquiries, find any example where, by implementing the penal abilities of the state—whether it was the criminal law or the Spanish Inquisition—moral and ethical conduct could be imposed on people by invoking criminal procedures? It did not work in the Spanish Inquisition. Has it worked in any other case, according to your inquiries?

Mr. Justice Hartt: I cannot say that I do know of such a case; but, on the other hand, it is easy to say that you cannot legislate morality. But of course, we do that all the time. In the Income Tax Act we are legislating morality.

Senator Greene: That is an immoral act, to begin with!

Senator Asselin: I found it hard to follow Mr. Justice Hartt when he said that as an alternative there should not be imprisonment, that we should try to find another mechanism. To give an example, if a man appears before the court and is sentenced to a fine, the judge has to give an alternative, that if he does not pay the fine he must go to jail. How do you explain that? You said the alternative should not be imprisonment. Under our present system, if someone appears before the court and is sentenced to a

fine, the judge has to give him an alternative, to pay the fine or to go to jail. The judge has no other way of doing it.

Mr. Justice Hartt: That is the traditional way. He is entitled to do it, and that is the way judges always do it at present. Our suggestion is that he should not be allowed to do it. If a fine is the appropriate sentence to be imposed and not jail—and that is in the discretion of the judge—we come to the conclusion that in a particular case the appropriate sentence to be imposed is a fine. Presumably, jail is not an appropriate sentence, because the judge decided that a fine was the appropriate sentence. He then says, "If you do not pay the fine, you will go to jail." A person with money has a choice. If a person does not have the money, he has no choice; he has to go to jail. We say that if a fine is the appropriate penalty, that should be the penalty which should be imposed, and it should be imposed on a day-fine basis, in terms of the person's ability to pay, so that there is some equanimity and justice in terms of the fine. One hundred dollars to me, despite my judicial salary, is not as much as \$100 is to someone who is unemployed. That is obvious. So we say that if a fine is the appropriate penalty, let the judge levy the fine and let the state recover that fine, the same as I recover any debt that someone owes me.

Senator Asselin: Do you want the old system we had before? About 15 or 20 years ago we could sue someone for civil debt and put him in prison. Do you want to go back to the old system?

Mr. Justice Hartt: No; quite the opposite, senator. There is no way, under our recommendation, that you could go to prison, where a fine is the appropriate penalty, except if the person wilfully refuses to pay the fine—where he has the money to pay it, and it is clear that he has the money—an investigation will be conducted by the judge—and the person says "I won't pay the fine." Then, it seems to me, you must give to the courts some alternate sanction, and the only sanction we have available to us at the present time is imprisonment. But, on the other hand, if a person is fined and he does not have the money, I say imprisonment is not appropriate and the state can recover, or any other individual who is owed a civil debt. If a person does not have the money, he does not pay it.

Senator Laird: Or make it \$1 down and \$1 a week.

Mr. Justice Hartt: Why not—or work orders?

Senator McIlraith: Mr. Justice Hartt concerned himself, in his recent answers, with those persons who were not able to pay the fine. Let us deal for a moment with those persons who are able to pay the fine. From my understanding of the present system, one is fined so many dollars or, in the alternative, seven day's jail. Is it inherent in your proposal, and in your earlier answers, that the alternative of spending time in jail should be taken away from those persons who are able to pay the fine?

Mr. Justice Hartt: It is only in the case of wilful default that a person would end up in jail. The original sentence that would be imposed would not have an alternative to it. There would be a fine, say, of \$100, and the person who is fined would be given a week to pay. If he does not pay within the week, he is brought back before the judge. The judge says, "Why did you not pay the \$100?", and the man says "I have the \$100, but I will not give it to you; I won't pay." The judge could then impose any other penalty which he considered appropriate in the circumstances. The man wilfully refused to carry out the order of the

court, just as if he were on a probation order and did not abide by the terms of the probation. He would be brought back before the judge and the judge would give some kind of penalty which he considered appropriate.

Senator McIlraith: Doesn't he now have the alternative to go to jail?

Mr. Justice Hartt: Under the present circumstances he does, yes.

Senator McIlraith: Yes. That is my point. You propose taking that right away from him?

Mr. Justice Hartt: Yes; because in certain circumstances a fine is the more appropriate penalty. It costs a lot of money to keep a man in jail, and so on. It is a much more severe penalty for a man to have to pay a fine.

Senator McIlraith: Some students have the money but are thrifty in managing it, and they will spend two or three days in jail rather than pay the \$100.

Senator Greene: Only a Scotsman!

Senator McIlraith: That is happening in our provincial courts from time to time. What I am trying to narrow down is whether you would take that right away from that small segment of convicted persons.

Mr. Justice Hartt: Yes, I would, sir.

Senator McIlraith: My other question is, you were concerned with the fine only and then the procedure when they failed to pay the fine. Your answers from that point on were that they would be brought back before the judge and, if they were able to pay the fine, they would ultimately be sentenced if they did not pay it. If they could not pay it, they would not go to jail. I think there is no difference of opinion on that point, anyway. You did not deal with the possibility of handling that problem without the duplication of hearings before the judge, of letting those persons who are not able to pay the fine request to be brought before the judge again.

Mr. Justice Hartt: If I understand your question, senator, that is what we mean in the paper when we say that for practical application it would require an additional administrative structure attached to the courts. There would have to be machinery set up whereby this matter could be dealt with—a clerk or someone who would be assigned to look after this question of fines, and give persons appropriate time to pay the fine, if they needed more time, and so on. I would not envisage that person being brought back before the judge, *per se*, however, until it came a question of his actually having to be incarcerated for a wilful refusal to pay. The actual administrative aspects of it would be done in terms of some administrative machinery attached to the court.

Senator Greene: There would have to be more money go to the provinces.

Mr. Justice Hartt: There might have to be, but you would save a lot of money, I suggest, senator, on people not being in jail.

Senator McIlraith: On this question of something new that would have to be created administratively, I take it you are not pressing as to the point of whether the convicted person would initiate the request that he not have to go to jail, or whether all persons who did not pay would have to appear before this administrative process.

Mr. Justice Hartt: Well, our investigations, senator, have indicated that most people try to carry out the responsibilities that are imposed upon them. Most people who are given fines try to pay them. There are, of course, some who do not.

Senator McIlraith: Those are the only ones I am concerned with at the moment.

Mr. Justice Hartt: The majority do try to carry out the responsibilities imposed upon them by the court, as I say. The ones that do not fall into two categories: there are the ones who cannot pay; and there are the ones who will not pay. Both of these groups eventually would have to come back to some type of clerk assigned for that purpose, and some disposition would have to be made. The person might appear before the clerk, and might say, "I will give you \$50 now, and \$5 every day for the next week." If that kind of thing would work, fine. Let us work out some kind of arrangement like that.

Senator McIlraith: I understand that, but I do not understand the two narrower points, as to why the one who chooses not to pay and has the money should not have his alternative without this administrative machinery being set up. I do not understand why you take that right away from him.

Mr. Justice Hartt: Well, only because, senator, we give to our judges a discretion as to the appropriate penalty to be imposed, and we basically take the position that if a fine is an appropriate penalty the judge must consider that in the interests of society that is the proper penalty that should be imposed; not to have the man spend three days in jail, but rather to pay a fine of what the judge considers to be the appropriate amount. It is not a question of the accused deciding which is appropriate.

Senator McIlraith: Supposing that at this point the judge decides he wants to be sympathetic with this convicted person and wants to give him the alternative, why should he not have that right? I do not understand why that should be taken away from the judge. There are odd cases, of course, in the courts—a small number of them.

Mr. Justice Hartt: Perhaps I just see jails a little differently. I do not see how it is humane for a judge to give an alternative to a man to go to jail. I just do not quite understand.

Senator McIlraith: But if the man asks for it?

Mr. Justice Hartt: If he asks for it, presumably, if he is a rational human being, he would rather do that than pay the fine, which he is entitled to pay; but the judge considers that the money is the appropriate commodity that he should be divulging, and I think in those circumstances the man should not be given a choice. He should pay the \$100, and the Crown should have the machinery to force him to pay the \$100. I do not think we have arrived at a situation yet where the accused should be given that choice. That situation might come up, senator but—

Senator McIlraith: It does. I have known it happen.

Senator Asselin: It does come up.

Mr. Justice Hartt: I know of situations where people would rather go to jail than spend the money, but those are the people that the Crown should force to pay the money, because that is the appropriate penalty.

Senator McIlraith: At the moment the only way of forcing them to pay the money is to give them a longer than normal jail sentence, and even that is not effective sometimes. I wonder why we need to put the courts, that are already overburdened, through this extra procedure in those few cases.

Senator Asselin: He has no liberty to make this choice.

Mr. Justice Hartt: I am not saying that it is not more efficient to send people to jail if they do not pay the fine.

Senator McIlraith: I am not advocating it.

Mr. Justice Hartt: Efficiency, I suppose, is one of the things that, administratively, I suppose you must look at in terms of the criminal justice system, but certainly justice is another thing that we must look at, and I say that this is unjust, and I would rather go for justice than efficiency. Certainly it is more efficient, there is no question about that; I could not argue that.

Senator McIlraith: I was not advocating being sent to jail. I was accepting your earlier point. I was trying to clarify, rather, one subdivision of the point.

Mr. Justice Hartt: Even on that basis, I think I should stick to the point the accused should not be given the choice, and if the fine is the appropriate penalty we should order a fine and enforce it. We should make him pay it. There are procedures for doing it.

Senator Neiman: Mr. Justice Hartt, I was just looking at clause 48 in Bill S-19. In this penalty section here, for a first offence, a fine of not more than \$500 is suggested, and in default of payment of the fine, imprisonment for a term of not more than three months. Perhaps it would be more appropriate to amend it and say, "or in wilful default of payment of the fine, to imprisonment for a term of not more than three months." Would you suggest something like that? Would inserting the words "wilful default of payment" correct most of what you refer to?

Mr. Justice Hartt: That would be in line with the basic position we take, senator. The only word of caution that I would give you with regard to it, because it is in line with our thinking, is that you might well be open to objection on the basis that there is no machinery available for determining the wilfulness of the default. As long as the committee was aware that that situation existed, than I would agree that that would be in line with our recommendations.

I am not a great constitutional lawyer, but I would think that the kind of machinery you would set up would be a matter for the provinces.

Senator Neiman: It would not be the first time that Parliament passed a law and worried about how it was going to be implemented at a later date.

The Chairman: One last question, perhaps, Mr. Justice Hartt. This has been suggested to me.

Granted that this bill is very controversial, and that public reaction to it is mixed, would there be any merit in

limiting the duration of the change to a certain period, and making allowance for review at the end of that period, or is the precedent of the capital punishment bill enough to keep us away from that?

Mr. Justice Hartt: I can only speak for myself in relation to that, Mr. Chairman, and not for the Commission, of course. I would think, personally, that that would be a very good thing to do. I think bills should be considered in this way. So often we pass bills, and they get on to the statute books and they stay there indefinitely. This would involve, probably, a whole new type of approach to legislation, but just speaking off the top of my head, because I have not given the matter any deep thought, it seems to me that it would be a good idea, because bills would come back for reconsideration.

Senator Greene: It would be consonant with the principles of participatory democracy, I would think, which would receive acclaim from certain sources.

Professor Fitzgerald: Could I just add something? One of the things the Commission has been very conscious of is that in trying to reform the law one is always taking a leap in the dark. Therefore any extent to which one can try out an experiment may be valuable. It is for that reason that in many areas we have suggested, and in fact, even helped to set up, pilot projects. The idea, therefore, of passing a bill for a limited period is well in line with our sort of approach to the criminal law.

The Chairman: Thank you, Professor Fitzgerald.

I have asked Mr. Justice Hartt whether he would have any objection to having the notes for presentation, which we have before us today, printed in our record, and he says he has no objection. Personally I think this is a very interesting document, and if an honourable senator would so move, I would entertain such a motion.

Senator McIlraith: I so move.

Hon. Senators: Agreed.

(For text of document, see Appendix.)

The Chairman: This will then be printed under the same heading, "Notes for Presentation."

Thank you very much, Mr. Justice Hartt and Professor Fitzgerald.

I now just want to suggest to the committee that we meet next Tuesday *in camera* to consider our procedure for further study of the bill. We are now through with the hearing of witnesses. I was going to suggest Tuesday at 2 o'clock, if that would be convenient. I am particularly concerned that the members of the steering committee, all of whom are here now—namely, Senator Laird, Senator Neiman, Senator McIlraith, Senator Asselin and myself—be here. Would that be convenient?

Hon. Senators: Yes.

The Chairman: Then the committee adjourns until Tuesday next to meet *in camera*.

The committee adjourned.

APPENDIX

BILL S-19

AN ACT TO AMEND THE FOOD
AND DRUGS ACT, THE NARCOTIC
CONTROL ACT AND THE CRIMINAL
CODE

NOTES FOR PRESENTATION
BY

MR. JUSTICE E.P. HARTT

AND

PROF. P.J. FITZGERALD

LAW REFORM COMMISSION OF CANADA

CONTENTS

Introduction.....	
(1) Legal Control.....	
(2) Control by Regulatory Law.....	
(3) Control by Real Criminal Law.....	
(a) The Price of Criminal Law.....	
(b) Justifying the Price.....	
(c) Benefits of Criminal Law.....	
(d) Conclusion on Cannabis and Criminal Law.	
(4) Enforcing the Law.....	
(5) Bill S-19 - Detailed Comments.....	
S 48.....	
S 49, 50 and 51.....	
(6) Conclusion on Cannabis Use . . .	
Note on Trafficking.....	

LAW AND CANNABISIntroduction

How should the law treat cannabis use and trafficking?

To answer this specifically, we should have to weigh a mountain of expert evidence on the effect of cannabis. We haven't done so, for this lies outside our programme. The Committee, however, is doing precisely this and is, therefore, better qualified than us to answer the specific question. We do not, therefore, try to answer it.

Instead, we try to help the Committee in another way. We try to set out the general principles which have a bearing on the answer to that question. In doing so we break the question down into five sub-questions:—

- (1) Should cannabis use be legally controlled?
- (2) Should it be prohibited by regulatory law?
- (3) Should it be outlawed by criminal law?
- (4) How should such criminal law be enforced?
- (5) How does Bill S-19 square with our answers to questions (1) - (4)?

(1) Legal Control

Should cannabis use be legally controlled? This is our starting question. Others might well object: "Cannabis is now controlled by criminal law, so isn't the proper question this: why shouldn't it be controlled -- why change the status quo?"

On the contrary, we reply, the boot is on the other foot. Since many are unhappy about the status quo -- and that's why Parliament proposes altering the law -- the question is open once more.

So, do we have to justify legal control or absence of legal control? We say the former: we have to justify legal control because of the burden it imposes. Legal control exacts a price.

The price we pay is threefold. Those whose activity is actually affected -- cannabis users -- suffer legal intervention. All of us whose potential activity is affected -- we might like to use cannabis one day but find it's not so easy -- find our liberty diminished. And then there is a general cost -- an economic one. We buy legal control of one thing, e.g., cannabis use, at the cost of less legal control of something else, that is if we keep the total amount of legal control constant. Alternatively, we buy legal control of cannabis without reducing control of anything else, at the cost

of increasing the total amount of legal control -- but then we have to pay more for that increase.

This then is the threefold cost we pay for legal control of cannabis use. Is it a cost worth paying? Only consideration of all the evidence on cannabis can tell. All we can say is this. There are many activities -- e.g., alcohol consumption -- which our society, through its governmental institutions, has seen fit to control by law, and no doubt for good practical reasons. If the evidence suggests that cannabis use is an activity we should be wise to regulate, then the price on balance might be one worth paying. Legal control of cannabis might be justifiable.

Control, though, takes many forms. One form is a licensing system. Another is state distribution. Yet another is the criminal law -- the focus of this submission.

Criminal law, as we argued in The Meaning of Guilt,* splits into two parts:

- (1) real criminal law which consists of acts that are obvious and serious wrongs -- like murder; and,
- (2) regulatory law which consists of thousands of acts not necessarily wrong in themselves but

* The Meaning of Guilt -- Strict Liability, Working Paper No. 2, of the Law Reform Commission of Canada (Ottawa: Information Canada, 1974).

prohibited in the general interest of society
like broadcasting without a licence.

Which part of criminal law could justifiably be used? We take first regulatory law and then real criminal law.

(2) Control by Regulatory Law

As we said, many acts that cause no clear or serious harm are prohibited as regulatory offences. Often justifiably. Society through its rulers may say: "It would be better for the community if such and such an activity was discouraged. Maybe we aren't sure it is harmful, but perhaps it is. Let's wait and see. And meanwhile not indulge in it. Let's make it an offence".

Making it a regulatory offence means setting a penalty by way of disincentive. It doesn't mean that there is any intrinsic wrongfulness involved. It only means that society says, "Don't do this; if you do, you pay a price." And some of course may choose to pay the price. The hope is that many won't.

Two caveats, however. First, those that do the act and pay the price aren't seen as doing anything wrong in itself -- except in so far as disobeying the law is seen as wrong. The act itself involves no moral turpitude. So conviction for it carries no

shame or stigma. Nor should the penalty. For that reason the Meaning of Guilt recommended that regulatory offences should never be punishable by that sanction which especially entails shame and stigma -- they should never in themselves be punishable by imprisonment. The only reason for imprisonment would be wilful non-payment of a fine or wilful non-compliance with a Court Order.

Second, at present, many regulatory offences -- and sad to say, some real crimes too -- are strict liability offences. People can be guilty in law without any real fault on their part. For example, a person may be convicted of unlawfully possessing something without realizing that he did possess it. The Meaning of Guilt argued that this is both unjust and inexpedient. Unjust, because it treats fault and no-fault both the same. Inexpedient, because it pre-empts inquiry into what is often the crucial question: was the defendant at fault or did he act reasonably? Accordingly, we recommended that anyone charged with a regulatory offence should have a good defence if he could show that he exercised due diligence.

So, could cannabis use be justifiably prohibited by regulatory law? We answer: "Yes, provided three conditions are fulfilled:

- (1) the evidence shows that such prohibition would be wise;
- (2) imprisonment is excluded (except as outlined above); and
- (3) due diligence is a defence."

(3) Control by Real Criminal Law

But can we justifiably go further? Can we justifiably outlaw cannabis use and make it a real crime? This takes us back to costs and benefits. We start with costs.

(a) The Price of Criminal Law

Criminal law, like other law, exacts a threefold price. Only the cost is higher. Other law imposes inconvenience. Criminal law means that people get hurt.

Defendants get hurt. They get arrested, charged, tried -- all shameful and perhaps traumatic experiences. They may get convicted with all the stigma this entails: they are branded as having done that which ought not to be done. And then they may suffer not so much a penalty as a punishment -- perhaps the disgrace of imprisonment.

The rest of us get hurt by loss of liberty. Make something a crime and we're no longer free to do it.

Then there is the social cost. The economic aspect we have looked at earlier. What of non-economic aspects? These are things less easily quantified and measured. For example, resentment, disrespect and alienation. Make a crime out of something many think perfectly all right, and we can build up a heap of resentment among those who want to do it. Alongside may come disrespect for that particular law; and worse, for criminal law in general! Especially if the act in question is analogous to other acts that aren't prohibited -- like drinking alcohol and smoking tobacco. "What makes pot-smoking a crime and tobacco-smoking O.K.?" they ask. "The status of the smokers," replies the cynic.

The price we pay for using criminal law, therefore, is clearly a most heavy one. It's one we should be very slow to pay. As we say in Limits of Criminal Law ^{*} and as we repeat in all our working papers on Sentencing, criminal law is an instrument to be used with restraint. Indeed, what ever justified our using it?

*

Limits of Criminal Law - Obscenity, A Test Case, Working Paper No. 10, of the Law Reform Commission of Canada (Ottawa: Information Canada, 1975)

(b) Justifying the Price

Criminal law use is only justified against acts that are seriously wrong. What makes acts seriously wrong? One of two features, we would argue (and here we exclude religious and other considerations which rest on personal belief). Seriously wrongful acts are acts that cause harm or else acts threatening essential or important social values.

(i) Harm

Does cannabis use cause harm? Does it harm the user? Does it harm others too? These questions can only be answered on the evidence. Suppose the answers are affirmative.

First, suppose that cannabis harms others. Suppose the harm is serious. In that case few will doubt our right to use the criminal law against it.

Second, suppose it only harms the user. Can we justifiably use criminal law to stop him using it? Are we entitled to protect

people against themselves? Yes, if the people are children and therefore too immature to see their own best interest. Yes, if the people want to be protected. Suppose a drug had terrible consequences for users but users couldn't resist it: in that case we might all decide to outlaw the drug and remove the temptation.

But what if users aren't children and don't want to be protected? Suppose, like cigarette smokers, they prefer to take the risk. Suppose, as mature, intelligent adults, they are prepared to sacrifice their health for temporary pleasure. Are we entitled to pre-empt their choice? In the Meaning of Guilt and in Limits of Criminal Law we argue that mature adults have to choose their own priorities. That's what it is to be an adult in a free society. Our criminal law shouldn't stop us being adults or stop our society being free. As Mill and Wolfenden later assert, a man's own good is not sufficient warrant for using criminal law against him.

So we conclude that criminal law could justifiably be invoked against cannabis use if

the evidence shows that it does serious harm to others, but not (except in the case of children) if the evidence shows that it only harms the user.

(ii) Threats to Values

Does cannabis use threaten essential or important social values? If so, why does that matter? And what can criminal law do about it?

First, is there any real threat from cannabis use? Again this is only answerable on all the evidence. On this we can't pronounce.

Second, why worry about threats to values? The reason is as follows. Man is a social animal — he needs society. Society means shared values. Some are essential. Respect for human life, personal inviolability and truth is necessary for any social life. If people thought that killing, wounding and lying were all right, social life would be impossible.

Some values, though not essential, are important. They make our society the kind of

society it is. Respect for freedom, privacy and human dignity are not essential -- there have been societies without them -- but we in Canada attach importance to them.

If cannabis use threatens any of these values, we have cause for concern. If it lessens respect for truth, human life or personal inviolability, it threatens social life. If it lessens respect for freedom or human dignity, it threatens our particular brand of social life. In either case, there would be reason to worry. In either case -- and again it's a question of evidence -- we should want to do something to bolster the threatened values.

And this is something criminal law might do. Which brings us to the benefits we derive from using criminal law.

(c) Benefits of Criminal Law

Using criminal law against an activity that ought to be prevented can have two kinds of benefits. First, it may serve to stop or to reduce the activity. Second, it may serve to bolster up essential or important values.

First, criminal law may reduce the activity by means of deterrence and reform. How far these work, however, is a question criminology finds it hard to answer exactly. How far would they work for cannabis use and trafficking? If they wouldn't work or if they would hardly work, then using criminal law under this head would impose benefit-less costs. As such it shouldn't be used under this head.

Second, criminal law may reinforce values. If we hold a certain value seriously, then we must do something when it is infringed. If we seriously respect the sanctity of human life, then faced with a murder in our midst we can't just do nothing. We must articulate the value. Criminal law is one way of doing this. Articulating the values maintains and reinforces them. This in our view is the major function of the criminal law.

(d) Conclusion on Cannabis and Criminal Law

Criminal law, therefore, might justifiably be employed against cannabis use provided one of three

conditions is fulfilled.

- (1) such use can be shown to seriously harm people other than the user; or
- (2) it can be shown to seriously harm child users; or
- (3) it can be shown to seriously threaten social values.

Even if any one of these conditions is fulfilled, we should still have to ask whether in social and economic terms criminal law is too costly, how it should best be enforced, and what sanctions would be justifiable. The answers to these questions will depend on the age and maturity of those affected.

(4) Enforcing the Law

As we said earlier, criminal law is a blunt and costly instrument. We have to use it with restraint. Our working paper on Diversion put it this way:--

"Underlying diversion is an attitude of restraint in the use of criminal law. This is only natural for restraint in the use of criminal law is demanded in the name of justice. It is unjust and unreasonable to inflict upon a wrongdoer more harm than necessary. Accordingly, as an incident is investigated by police and

passed along the criminal process an onus should rest upon officials to show why the case should proceed further. At different stages in the criminal justice system opportunities arise for police to screen a case from the system, the prosecution to suspend charges pending settlement at the pre-trial level or the Court to exercise discretion to withhold a conviction or to impose a sanction other than imprisonment. At these critical points within the criminal justice system, the case should not be passed automatically on to the next stage. The principle of restraint requires that an onus be placed on officials to show why the next more severe step should be taken.

"Placing such an onus on officials would be a departure from existing law and practice in some respects, but it is completely in accord with reason and justice. Since all sanctions are imposed only at a cost in human and financial terms, it is reasonable that such costs should not be imposed needlessly. Instead of automatically proceeding from complaint to arrest to charge, trial, conviction and imprisonment, it makes sense to pause and justify proceeding to the next more serious and costly step. The amendments in the law of bail and provision for conditional or absolute discharge are in part a recognition of the need to proceed with restraint and to justify further proceedings. Placing an onus on officials to justify proceeding to the next step gives effect to the principle of restraint, encourages diversion in appropriate cases and makes decision to divert visible and accountable."

So even if we retain criminal laws regarding cannabis use, it might nevertheless be desirable to make use of diversion.* Examples of such diversion are absorption of crime by the community, police screening of cases out of the criminal justice system, settling incidents at the pre-trial level, and using sanctions other than imprisonment.

First, community absorption. The best means of solving a social problem is by doing so in the community. We could assist, financially and otherwise, groups trying to deal with cannabis in their own area without resorting to criminal law.

Second, police screening. We could require police departments to follow a policy of restraint and not arrest people in possession of cannabis. We might even give them the option to "ticket" such people, as we do with certain motor offenders.

Third, pre-trial settlement. Diversion programmes could be available to allow settlement without full trial. Such programmes could include education into the possible dangers of cannabis use.

* Diversion, Working Paper 7, of the Law Reform Commission of Canada (Ottawa: Information Canada, 1975).

Fourthly, alternative sanctions. In our view, as expressed in our forthcoming working paper on Imprisonment,* prison should only be used in three situations. It can justifiably be used to separate dangerous offenders from society, to denounce those acts which no lesser sanction can sufficiently stigmatize, and to sanction wilful defaults — those who can but won't submit to other sanctions imposed on them. Cannabis users should not be sent to prison unless we are satisfied that they are a serious menace to the rest of us or that their conduct requires this drastic kind of denunciation or that they are wilfully refusing to pay the fines imposed on them.

Finally, at each step in the process where the authorities have the option of going no further or going on to the next step, the onus should be on them to show good cause for going on.

(5) Bill S-19 — Detailed Comments

How does the Bill look in the light of these general principles? We concentrate on ss. 48, 49, 50 and 51.

S.48

Section 48 (2) provides for the imprisonment of

* Imprisonment and Release, Working Paper 11, of the Law Reform Commission of Canada (Ottawa: Information Canada, to be released).

offenders who default in paying their fines. We object to this on several grounds. First, in our working paper on Fines* we recommend that imprisonment not be used as an alternate sanction if a fine is not paid. It is both unjust and unreasonable to inflict more harm than necessary on any wrongdoer. If a fine is appropriate, the far more severe sanction of imprisonment is not an appropriate alternative, though it is not excluded as a last resort as indicated earlier. Of course this new approach would require new administrative machinery, as outlined below.

Second, we also recommend in that working paper that fines not be imposed without regard to the offender's financial circumstances. Fairness and justice demand no less. In our working paper, The Principles of Sentencing and Dispositions,**we included equal treatment of similar offences and offenders as a major pre-requisite to a just sentencing policy. Such equality cannot be achieved if offenders are ordered to pay the same dollar amount regardless of their finances. A fine of \$100.00 affects a poor person more severely than a rich one, a student more than an executive.

Third, we argue that offenders unable to pay their fines immediately must be given every opportunity to fulfil their obligation. Arrangements for payment of fines should be made through

* Fines, Working Paper 6, of The Law Reform Commission of Canada (Ottawa: Information Canada, 1974).

** The Principles of Sentencing and Dispositions, Working Paper 3, of The Law Reform Commission of Canada (Ottawa: Information Canada, 1974).

an administrative body. This body could grant extensions when necessary, permit payments by instalments, or allow offenders to "work off" their fines through community work orders. The drastic sanction of imprisonment should be considered only if the offender has the ability to pay but deliberately refuses to do so. Imprisonment must never be used as a punishment for being poor.

S. 49, 50 and 51

Except for capital punishment, imprisonment is the most drastic sanction. It is the most costly in economic, social and psychological terms. We feel, that it should only be employed when the objectives contemplated by the law cannot be realized by the use of any other sanction. More specifically, it should only be used for the purposes of separation, denunciation, or wilful default. Do the provisions relating to the trafficking, importing, exporting, or cultivating of cannabis fall within any of these three categories?

Separation

The use of imprisonment to separate an offender from the rest of society is justified only where persons who have committed serious crimes represent a serious threat to the life and personal security of others. Before this sanction can be employed for this purpose, two conditions must be met:

- (1) The offender must have been convicted of a serious offence that endangered the life or personal security of others, and

- (2) The probability of the offender committing another crime endangering the life or personal security of others in the immediate future shows that imprisonment is the only sanction that can adequately promote the general feeling of personal security.

Imprisonment for the purpose of separation, then, must be restricted to cases involving a violent crime against the person. It is for this Committee to decide whether exporting, trafficking or cultivating cannabis falls within this category.

Denunciation

Imprisonment can also be justified where the offence committed constitutes such an affront to fundamental values that society cannot tolerate its punishment or denunciation by any sanction other than imprisonment. A flagrant abuse of public office, for example, would fall within this category. The suggestion in our working paper, however, is that the maximum term of imprisonment for denunciation purposes should be not more than three years. This Committee -- must decide whether the offences in this Act are such as to require imprisonment. Even if they are, we could not support a term of exceeding three years.

Wilful Default

This final use of imprisonment concerns the sanctioning of offenders who have wilfully failed to carry out obligations which were imposed on them under other types of sentences. This is not

applicable to sections 49, 50 and 51 of the proposed legislation.

Length of Term

If cultivating or trafficking of cannabis is such a threat to our fundamental values that imprisonment is appropriate, what is the appropriate length of term? Although no objective measurements of the effectiveness of minimum terms are available, experience doesn't show that they have any special deterrent or educative effect. Besides, circumstances vary greatly from case to case. We object in principle to minimum sentences: they curtail judicial discretion and also encourage undesirable bargains between the parties. We also question the extremely high maximum terms of imprisonment provided for in this legislation. An examination of sentences received by those convicted of possession for the purposes of trafficking, for example, reveals that even when the maximum term was imprisonment for life, not one person was sentenced to more than nine years while more than three-quarters of those convicted received sentences of two years or less. Besides, though sentences may settle around an established average, wide deviations in particular cases may result in feelings of unequal treatment and therefore in unrest in prisons.

(6) Conclusion Regarding Cannabis Use

In our view it may not be difficult to make out a case for legal control of cannabis use. Indeed it may not be

too difficult to support prohibition by regulatory law. It may be more difficult to justify prohibition by criminal law. It may be even more difficult to countenance invoking the full criminal trial process. And it may be much more difficult to justify sending cannabis users to prison. But -- to come back to our starting-point -- all this is only to be settled in the light of all the evidence. What we have offered is guidance by way of general principles.

Note on Trafficking

Our submission indicates general principles to guide the Committee's overall approach. In setting out these principles we focussed simply on one offence - possession - by way of illustration. We realize, however, that trafficking raises extra problems: for instance, the problem of the quality of the substance sold. We, therefore, add a few observations on this second offence.

The question of trafficking is both easier and harder than that of use. In one sense it is easier, because the answer to it follows from the answer given to the question of use. If cannabis use should be discouraged or controlled, a fortiori so should trafficking. The best means of control is to go for the source of supply. Likewise, if use should be prohibited by regulatory law, then so should trafficking. Finally, if use ought to be made a "real" crime, then so should trafficking, which amounts to making that "real" crime possible.

More difficult is the converse question. Suppose we felt use shouldn't be discouraged, would that mean that trafficking shouldn't be discouraged either? If use is not prohibited by regulatory law, should trafficking be? If use is not a "real" crime, should trafficking be?

These are questions again to be answered on the evidence. The effects of use and the effects of trafficking -- which might conceivably be different -- must be weighed. Meanwhile we draw the Committee's attention to two considerations by way of general principles.

First, an economic problem: decriminalize use and criminalize traffic and the price of cannabis goes up. Free use increases demand. Prohibited traffic reduces supply. So trafficking in cannabis becomes more attractive economically than is consistent with the goal of discouraging cannabis use.

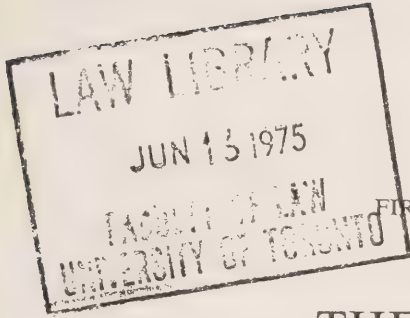
Second, a logical problem: allowing use and forbidding traffic don't quite square. Tell the citizen he is free to use cannabis and then remove the cannabis itself, and it looks as if we aren't being honest with him. There seems to be an inconsistency.

But is there? Suppose the evidence shows that using cannabis harms the user. Suppose, however, society decides that all the same the citizen should be free to choose whether or not to use it. Why can't society at the same time decide that use should be discouraged by education, propaganda and so on? Suppose at the same time the evidence shows that traffickers are positively encouraging people to use cannabis. Surely

society could justifiably say: "Let's discourage trafficking. Adult citizens should be free to use cannabis, but all citizens should also be free from being pressured into using it, especially if they are children".

After all, we find this elsewhere in our law. Committing -- or trying to commit -- suicide isn't a crime today in Canada. But counselling someone to commit suicide is, and so is aiding and abetting. Nor is this necessarily inconsistent. We don't deny a person the right to end his life, but nor do we deny his right to be free from being talked into doing so -- especially since it might be done for personal gain: the suicide's death might all too obviously benefit the counsellor and this, not the suicide's best interest, might be the reason for the advice.

What this suggests is that a distinction can be drawn between casual, non-commercial trafficking and organized trafficking for gain. We could prohibit selling without prohibiting giving, though not necessarily for children. Whether such distinction should be drawn, however, can only be determined on the evidence.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 20

TUESDAY, MAY 6, 1975
TUESDAY, MAY 13, 1975
TUESDAY, MAY 20, 1975

Fourteenth Proceedings on Bill S-19, intituled:

“An Act to amend the Food and Drugs Act, the Narcotic
Control Act and the Criminal Code”

(Appendix: See Mini

SC.LCA
UNIVERSITY OF TORONTO
FACULTY OF LAW
LIBRARY
TORONTO 5 ONT

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, May 6, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:00 p.m. (*in camera*).

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Buckwold, Croll, Fergusson, Godfrey, Laird, McGrand, McIlraith, Neiman, Perrault and Prowse.—(12)

Present but not of the Committee: The Honourable Senators Greene and Heath.—(2)

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee.

On Motion of the Honourable Senator Godfrey, it was *Resolved* to include in this day's proceedings the document entitled "Cannabis-Weed of Woe" submitted by Mrs. Simma Holt, Member of Parliament for Vancouver Kingsway. The document is printed as an Appendix.

The Committee then resumed its examination of Bill S-19 intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

Following discussion, the Committee resolved that Mr. R. L. du Plessis, Legal Adviser to the Committee, prepare draft revisions and amendments of clauses examined today for presentation at the next meeting.

At 4:20 p.m., the Committee adjourned until Tuesday, May 13, 1975 at 11:00 a.m.

ATTEST:

Tuesday, May 13, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m. (*in camera*).

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Fergusson, Godfrey, McGrand, McIlraith, Neiman and Prowse.—(8)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee and Mr. J. E. Hodges, Legal Adviser to the Committee, Department of Justice.

The Committee continued its examination of Bill S-19 intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

At 12:30 p.m. the Committee adjourned until 2:00 p.m.

ATTEST:

At 2:00 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Fergusson, Godfrey, McGrand, McIlraith, Neiman and Prowse.—(8)

Present but not of the Committee: The Honourable Senators Cameron, Greene and Haig.—(3)

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee; Mr. J. E. Hodges, Legal Adviser to the Committee, Department of Justice and Mr. Hugh Finsten, Project Officer, Research Branch, Library of Parliament.

The Committee continued its examination of Bill S-19, intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

At 3:35 p.m. the Committee adjourned until Tuesday, May 20, 1975 at 11:00 a.m.

ATTEST:

Tuesday, May 20, 1975.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m. (*in camera*).

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Godfrey, Laird, McGrand, McIlraith, Neiman and Prowse.—(8)

Present but not of the Committee: The Honourable Senators Greene and Heath.—(2)

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee; Mr. J. A. Scollin, Assistant Deputy Attorney General (Criminal Law), and Mr. J. E. Hodges, Legal Adviser to the Committee, Department of Justice; Mr. Hugh Finsten, Project Officer, Research Branch, Library of Parliament.

The Committee continued its examination of Bill S-19 intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

The Committee discussed various amendments to the above Bill and approved revisions to certain clauses as drafted by Mr. du Plessis in his capacity as acting Law Clerk.

At 12:20 p.m. the Committee adjourned until 2:00 p.m.

At 2:00 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Fergusson, Godfrey, Laird, McGrand, McIlraith, Neiman, Prowse and Quart.—(10)

Present but not of the Committee: The Honourable Senators Greene and Heath.

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee; Mr. J. A. Scollin, Assistant Deputy Attorney General (Criminal Law), and Mr. J. E. Hodges, Legal Adviser to the Committee, Department of Justice; Mr. Hugh Finsten, Project Officer, Research Branch, Library of Parliament.

The Committee further discussed Bill S-19, and approved further amendments to the said Bill.

It was *Resolved* that final approval of the Report of the Committee be deferred until the Chairman presents the said Report incorporating all amendments approved at this day's meeting.

At 3:15 p.m. the Committee adjourned until Tuesday, May 27, 1975 at 2:00 p.m.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

APPENDIX

CANNABIS Weed of Woe

By

SIMMA HOLT, M. P.,
VANCOUVER-KINGSWAY

LATIN FOR "HEMP", A CANE LIKE PLANT,
ACTUALLY A WILD WEED THAT IS THE SOURCE
MARIJUANA, HASHISH, AND POWERFUL LIQUID
HASHISH.

OTTAWA, MARCH, 1975

This pamphlet is about cannabis and the current drug epidemic. It is written for the 84,000 people of all ages who live in my constituency, Vancouver-Kingsway, one of the most crime-troubled areas in Canada.

It is designed to warn young and old -- in case you are not aware of the new knowledge emerging on the drug called "cannabis" -- IT IS A DANGEROUS DRUG. Not all the evidence is in yet, but what is known requires that the greatest caution be exercised in the individual use of this drug.

Legislation introduced in the Senate of the Government of Canada is now under inquiry, before coming to the House of Commons.

The letters sent to Ottawa by many of you and other Canadians opposing lessened penalties for cannabis use and trafficking, and my own information to Parliamentarians of both Houses, should certainly have some effect. Hopefully it will prevent weakening of the law, as is being contemplated.

Because of the limitation of space, this report on cannabis cannot be as complete as I would wish.

THE LAW NOW AND THE PROPOSED CHANGE

This is a chart of the law as it would be if the new law passes the Senate and the House of Commons.

OFFENCE	PROPOSED PENALTIES	EXISTING PENALTIES
	PART V - FOOD & DRUGS ACT	NARCOTIC CONTROL ACT
1. SIMPLE POSSESSION Summary -	First Offence A fine of up to \$500 or imprisonment for up to 3 months in default Subsequent Offence A fine of up to \$1,000 or imprisonment for up to 6 months in default	First Offence A fine of up to \$1,000 or imprisonment for 6 months or both Subsequent Offence A fine of up to \$2,000 or imprisonment for 1 year or both
Indictment -	No provision	Imprisonment for up to 7 years
2. TRAFFICKING Summary -	A fine of up to \$1,000 or imprisonment for up to 18 months or both	No provision
Indictment -	Imprisonment for up to 10 years	Imprisonment for life
3. POSSESSION FOR THE PURPOSE OF TRAFFICKING	Identical penalties to trafficking as set forth above.	
4. IMPORTING OR EXPORTING Summary -	Imprisonment for up to 2 years	No provision
Indictment -	Imprisonment up to 14 years - not less than 3 years (3-year sentence would <u>not</u> apply where convicted person can prove he imported or exported for own consumption only)	Imprisonment for life minimum 7 years
5. CULTIVATION Summary -	A fine of up to \$1,000 or imprisonment for up to 18 months or both	No provision
Indictment -	Imprisonment for up to 10 years	Imprisonment for up to 7 years

WHAT IT MEANS

The proposed law governing cannabis is to be moved from the Narcotics Control Act to the Food and Drug Act.

For simple possession, the fine and imprisonment is halved from \$1,000 to \$500, or in default imprisonment reduced from six months to three months.

Penalties for trafficking in cannabis are reduced to a point where the courts can proceed by summary conviction, meaning that the trafficker is not brought into the court until his trial date. Thus, free until trial and conviction, he can continue to peddle drugs -- at an accelerated rate to build his income -- before it is cut off by prison. The present law has no summary conviction for trafficking, only arrest and indictment. The sentence now can be life in prison. Under the new law, the imprisonment is UP to ten years. "Up to" allows the judge discretion to give no prison term -- freedom to continue merchandising death.

MY POSITION

Ninety-three percent of the people in Vancouver-Kingsway who answered my questionnaire feel as I do -- that the penalties should not be reduced.

For possession of a small quantity of drugs, the courts always had discretion as to whether or not a person would be sent to prison or fined. The fine was UP TO \$1,000, or six months in jail. Cutting it all in half gives a false impression to the young that they are dealing with a harmless drug that should not be taken seriously. Police see it as virtual legalization of its use.

Mr. Justice Angelo Branca of the B.C. Court of Appeal, referring to drug traffickers, stated in the Queen vs Ponak & Gunn, March 9, 1973:

"These people belong to a class of offenders who have foreclosed themselves of any consideration of mercy equally as much as they have shown no mercy or compassion to the men, women and children whose lives have been ruined by the narcotics in which they traffic, so that these merchants,.... may live in the luxury of their ill-gotten and tainted gains....

"The respondents have played for big stakes in a very dangerous business. The gains are big. The penalty must be equally imposing."

Though the accused were heroin traffickers, the Judge says he would apply the same words to those who traffic in cannabis.

I also feel that the strongest penalty should be considered. Rather than reducing penalties, traffickers should be put out of circulation for life.

WHAT IS CANNABIS

There are those who think that it is one single harmless drug called marijuana or in street terms Mary Jane, pot, grass, weed, hemp, tea, whang, boo, Indian hay, charge, gage, goof butts; and the cigarettes, reefers, greeters, muggles, stick, rocket, weed, joint. Burned to a tiny butt, it is known as a roach.

Cannabis is a weed with psychotoxic properties in its resins. It has been used for 3,000 years to heighten perception up to hallucination, and to release inhibitions -- right up to assassinations.

Cannabis is Latin for hemp, (a cane-like plant). It is unique. It exists in a single species. However, the varieties differ from one another in the quantity and the potency of the resin they produce. These differences are conditioned by

geographical location. High temperature and low humidity contribute to the greatest potency. It is said that in a single plant, intensity varies from leaf to leaf. Informal undefined "grades" range from Mexican green or Kentucky blue up to Acapulco gold. Cannabis Indica is grown in the Indian sub-continent, or from seeds originating there. It contains the most potent resin -- commonly called hashish -- five to six times more intoxicating than the resin of the varieties Cannabis Americana or Cannabis Mexicana.

Tetrahydrocannabinol (THC) is the principle psycho-active factor in cannabis. There are at least six other constituents in the drug, their effects not yet explored.

Cannabis in use today comes in four basic forms. They are:

1. marijuana with .5 to 2% THC
2. hashish, up to 10% THC (known as the "assassins drug", the name probably derived from Hasan, the leader of teenaged cannabis-using killers of 1090 - 1124 AD)
3. liquid hashish, 60 to 90% THC, said to be powerful enough for one pound to send 15,000 people "into stratosphere.... an almost lethal potential for mass intoxication." (US Senate Report on Marijuana-Hashish Epidemic May-June, 1974)
4. Thai weed or elephant stick, a newcomer on the west coast, varying but undetermined intensity.

CANNABIS: FOOD OR NARCOTIC

There is no medical or psychiatric use known for it. Unlike other drugs, it has -- in this stage of time -- only one purpose: to get high, to get "stoned", to become "spaced out."

Since it is neither a food, nor a drug that any doctor prescribes, there is no logical reason for transferring this from the Narcotics Control Act to the Food and Drug Act.

"Narcotic" is defined in Richard R. Lingeman's dictionary on drugs as an addictive drug. The World Health Organization set out three effects for true addiction -- psychological dependence, tolerance, and physical dependence.

Many cannabis users, like alcoholics and heroin dabblers getting into the habit, say: "I can stop whenever I want to." When asked why they don't when their habit is obviously bigger than they realize, they reply: "I don't want to." The message is clear; they cannot, or will not.

When the user indulges in chronic compulsive use, he or she is as dependent or addicted as any other addict. In the cannabis society a regular user is called a "head" -- an addict, according to Lingeman's definition.

Tolerance reveals itself when the regular user "needs something better" than pot, progresses to the heavier types of cannabis, or to other drugs.

Those who compare the painful physical hold of heroin with that of cannabis, are apparently unaware that heroin users can be physically free in a matter of days, but never psychologically free. This inevitably pulls many -- certainly not all -- users back. Psychological addiction is the major problem in all drug dependency.

Dr. David Ausubel of the Bureau of Educational Research of the University of Illinois does not accept the claim of those who say they can cut off cannabis any time they want. He maintains that the regular user, like any other addict, when anticipating separation from the source of supply, takes steps to accumulate sufficient reserve "to tide him over." They bitterly resent deprivation and readily admit their intention to return to the drug as soon as conditions permit. One study revealed that enforced deprivation resulted in anxiety, restlessness, irritability or even a state of depression with suicidal phantasies,....or

actual suicidal attempts, according to Ausubel.

I have seen this repeatedly through the years of working with cannabis users. One recent case involved a 15-year-old girl who was a heavy user of marijuana -- "only pot", as she put it. She came to our office for help, through her depression and anxiety over her drug enslavement. She said that pot has kept her in hell. She attempted suicide February 27.



ALCOHOL AND CANNABIS



One of the major inducements to the young to get involved in cannabis has been the cliché-type argument of the intellectual pushers and users that "alcohol is more dangerous than marijuana." The young, seeing adults drinking, rationalize that it is fine for them to use marijuana.

To compare alcohol to cannabis is similar to comparing a malignant brain tumor with cancer of the lungs. Both can be fatal, even though they may be slowed to the ultimate tragedy.

Alcohol has been freed for almost 50 years and it has enslaved at least 732,000 people with serious alcohol problems, right up to alcoholism. From these there could be 3,000,000 or more other victims, (spouses, parents and children). It is the cause of 70 to 75 percent of fatal traffic accidents and the same percentage in prison for crime.

There is no way society can reverse the alcohol tragedy. If we set cannabis free, we could have 732,000 "pot heads" in five or ten years, and a new drug to add to the carnage on highways and in the entire fabric of our society. Most of the violence now exploding in Vancouver is drug related and much of it from inhibition-freeing cannabis, in some cases, in combination with the unpredictable drug -- alcohol.

Scientists now know that alcohol leaves the body within 24 hours; marijuana remains for days and

even weeks. "The effect on the brain is much more rapid than alcohol.....the mental effect from marijuana takes about three years, and from alcohol ten times that time," according to Dr. Harvey Powelson, Physician and Research Psychiatrist at the University of California who headed the Student Health Services at Berkley in the first five years of the student riots and the start of the wide use of hallucinogens, 1965.

Records and literature of ancient and contemporary Asia, the reality of the hippie tragedy of the last half of the 1960's, and the masses of scientific evidence emerging, now indicate cannabis could, in fact, be more dangerous than alcohol.

There can be no predicting the tragedy if it is released in the same way as alcohol to become another socially, legally acceptable drug. Certainly it will compound the social disintegration and tragedy of Canada's young.

POSSIBLE BAD TRIP FOR LAW

Until there is absolute proof that cannabis is harmless, it should not be available, or in any way encouraged by legislation or by intellectual indoctrination or pushing.

As long as it remains on the law books with strength, the police will pick up young people, hopefully many before it is too late, stopping them either through reunion with families or help from street workers, social workers, counsellors, and by education. Some frightened by arrest -- even those imprisoned in the 1960's -- were interrupted on the drug trail in time to return to the mainstream of life. The others are into hard drugs, violent crime, and many are dead.

By retaining it in the criminal code, with possession illegal, it will prevent some youngsters from using it.

As the law now stands, the courts have discretion in using fines, prison or probation.

Both law and intensive education in the schools on dangers and ultimate waste of cannabis involvement, should be used to deter youngsters from entering the drug cult.

FALLACY OF DECRIMINALIZATION

There is a great cry now that children are going to jail for one reefer, or that a young university student can get a seven year prison term for bringing one or two cigarettes across the border. The first is an argument of the uninformed or a propaganda device for those arguing for legalization. The second is a blatant lie; those who perpetuate this myth know that it does not happen, that, at most, the charge would be possession, not importing. Even if an irresponsible border policeman charged the latter, the court would reduce the charge.

Furthermore, children are charged under the Juvenile Delinquents Act, whether it is for possession of drugs, murder, or violating a by-law, such as riding a bicycle on a sidewalk. They do not get criminal records. Those who weep over the imprisonment of the young drug user forget that we still imprison people for theft, shoplifting and other minor crimes, many less harmful than the head who pushes drugs on to others. Prison is as traumatic for them as it is for the drug user.

The old law and the proposed changes are written for the rich; those who cannot afford the fine will still go to prison. While prisons are not the answer to any social problem, strong law on the books can be a deterrent to many who respect and avoid breaking laws. And there are still many people of all ages in this category. Every user is in essence a trafficker -- either to obtain companionship in the use, or to make money to buy drugs.

The mother of a young marijuana user who was deteriorating mentally and physically said: "I would rather have my child in prison than dead."



CANNABIS IS DANGEROUS



It was apparent to me and to anyone who was working on the streets of Vancouver and throughout North America, as far back as 1965-66 when the hallucinogenic drug cult was developing, that young people were turning hippie, neglecting their hygiene, dropping out of school, top students unable to return to their level after a prolonged cannabis binge. We saw memory loss, and a type of senility. The young told me of feeling paranoid, forgetting the names of close friends, of illness (especially chest ailments and infections) that seemed to have no end. I was aware that the young stopped maturing in the period when they used drugs instead of facing the social challenge of life in their teens.

INTENSIVE SCIENTIFIC RESEARCH STARTS

In 1969 major research projects started in the United States when cannabis was released for this purpose to scientists. The findings are pouring in now, supplementing collected knowledge of modern science and historical records from around the world.

In simple summary form, here are some of the types of damage appearing among regular and chronic users:

- irreversible brain damage;
- damage to lungs and breathing systems;
- abnormal microscopic changes in lung tissue;
- respiratory crippling of young comparable to a two-pack-a-day smoker of ten to twenty years;
- male hormone (testosterone) level and sperm count reduced. Some young male users left sterile, and impotent. (Potency returned for some when they gave up marijuana);
- disruption of normal body cell functions;

- diminished immunity response, the protection from disease;
- personality changes;
- apathetic behaviour;
- interference with ability to measure time and distance;
- a new threat equal to, or worse, than alcohol for drivers on the highway.

IN SCIENTIFIC TERMS

Evidence given last summer by scientists before the US Senate Committee on the Marijuana Epidemic listed damages from cannabis this way.

1. THC tends to accumulate in the brain and gonads and other fatty tissues in the manner of DDT. Also THC persists in the body long after ingestion, some residual amounts found for a week.
2. Marijuana, even in moderate amounts, causes massive damage to the entire cellular process. It results in chromosome reduction from the normal 46 to 38 down to eight. The Senate Committee in summary said: "Confirmation that marijuana does such serious damage to the entire cellular process opens up an entire spectrum of frightening possibilities".
3. Knowledge of cumulative effect and cellular damage indicates that marijuana inflicts irreversible damage on the brain, including actual brain atrophy, when used in a chronic manner for several years. Brilliant young people on prolonged cannabis binges could not achieve their pre-pot level.
4. Marijuana adversely affects the reproductive process: (a) male hormone (testosterone) level reduced by 44 percent in young male marijuana users on a four-day-a-week habit for six months; (b) sperm count was dramatically reduced, falling almost to zero -- to sterility and impotency.
5. Chronic smoking can produce sinusitis, pharyngitis, bronchitis, emphysema and other respiratory difficulties in a year or less, as

- opposed to ten to twenty years of cigarette smoking to produce comparable complications.
6. "Pre-cancerous" symptoms are showing in young cannabis smokers.
 7. Chronic cannabis use results in deterioration of mental functioning, revealing conditions resembling paranoia, and creating a "zombie-like"...apathy, dullness and lethargy, with mild to severe impairment of judgement, concentration and memory.
 8. Witnesses feared that the total loss of individual will would make a large population of cannabis users a serious danger, since it makes them susceptible to manipulation by extremists. (For example, the assassins of Hasan or those of the hippie-family of Charles Manson.)

SCIENTISTS PREDICT MARIJUANA EPIDEMIC

If the cannabis epidemic continues to spread at the present rate, society will be "saddled" with:

- a large population of young semi-zombies;
- a partial generation of teenagers and early 20's unable to function;
- a partial generation who never matured, either intellectually or physically, because of cellular and hormonal deficiency during the critical period of puberty;
- respiratory crippling of users.

The scientists said: "If the epidemic is not rolled back, our society may be largely taken over by a 'marijuana culture' -- a culture motivated by a desire to escape from reality and by a consuming lust for self-gratification..... Such a society could not long endure".

THEN AND NOW

Chinese cultivated hemp to obtain fibre for clothing. The scholar-Emperor Shen Nung, in a pharmacology book written in 2737 BC, recommended "Ma"

(the name given in China to the resin) for beri-beri, constipation, female weakness, gout, malaria, rheumatism, and absent mindedness. In 220 AD, Chinese physician Hoa-Tho mixed the resin with wine, (named "ma-yo") and claimed it to be useful to control pain during surgical procedures. (The proponents of legalizing marijuana argue this is a virtue of cannabis). But its aberrant use by the young was condemned by the Chinese, branding it as "the liberator of sin."

The people of India, however, used the resin almost exclusively for its psychotoxic effects. It was described as "holy" in the literature of the time, foretelling of "happiness...curing dysentery, and sunstroke, clears phlegm, quickens digestion, sharpens appetite, makes the tongue of the lisper plain, freshens the intellect and gives alertness to the body and gaiety of the mind....for (this) His goodness and the Almighty made his bhang."

"The Indians looked upon their hemp plant with eyes teared with love," according to one writer. Terrible consequences were predicted by native writers of restrictions put on "so holy and gracious a herb." One said: "So grand a result, so tiny a sin."

Extolling it then, as now, virtually made it a universal drug.

It became such a serious problem through the years that by 1930 attempts to eliminate or stop what was seen as damaging to the nation itself, was impossible. By the 1960's the government tried to legislate against cannabis use, recognizing it may be hopeless.

This -- "so grand a result, so tiny a sin" -- we now invite as the destroyer of our own younger culture.

THE MYSTICS

The missionary, J. Campbell Oman (Ascetics and Saints of India, 1903) described charas and bhang as powerful narcotics on the mind and bodies of itinerant monks who habitually use them. He wrote: "A great number of Hindu saints live in a state of perpetual intoxication and call this stupification... fixing the mind on God."

Assyrian scholars referred to it in 650 BC, as "Azulla", a plant useful for spinning, rope-making, and to dispel depression. Poets such as Homer rhapsodized it as a drug so powerful that the user would feel no sorrow even though his mother and father died, nor cry if he saw his brother or dear son slaughtered before him.

Pliny, in the first century AD, described delirium from this plant, and when taken internally with Myrrh and wine, it caused "all sorts of visionary forms" and induced the most "immoderate laughter."

In 1251, when the Garden of Cafour near Cairo -- known for hashish abuse by its fakirs -- was destroyed, contemporary writers saw it as "just punishment from God." Critics of the time associated cannabis with "the most degenerate people, libertines, and feeble-minded who vied with each other to see who could outdo the other in its use." Used without shame, wrote one scribe, it was "the vilest of filth and the most revolting excrement."

"In truth", wrote social philosopher Sylvester DeSacy (Chrestomathie Arabe, 1826), "there is nothing which is more dangerous to the temperment. It is known today by everybody in Egypt, in Syria, in Irak, and in the country of Roum,....warnings were issued. But they were in vain; the habit had spread and could not be eradicated."

CANNABIS ARRIVES IN NORTH AMERICA

It came to America when the British shipping fleet needed long, flexible rope. Their usual source of the hemp plant, Dutch East Indies, was eliminated following a disagreement with the Dutch. Thus, in 1611 near Jamestown, Virginia, cannabis was first purposely planted and grown in the United States. King James ordered colonists to increase hemp production; by 1630 it became a staple of the colonial clothing industry.

Steam power and Eli Whitney's invention of the cotton gin reduced the hemp requirement and cultivation was abandoned in America. Plants returned to weed status. Borne by the wind, they spread across the continent.

The first significant cannabis use began in New Orleans. By 1926 that city was saturated with cannabis users. While there are no statistics for cannabis involvement in the U.S., estimates produced during the U.S. Senate hearings May-June, 1974, were 20 to 25 million who have used, and one to two million regular users. Marijuana seizures increased ten-fold in the past five years, to a total of 780,000 pounds in 1973; but the federal seizures of the more powerful hashish, over the same period, twenty-five times -- to almost 54,000 pounds -- indicating only a small part of the traffic and market that exists.

....AND IN CANADA

In Canada, before 1958 there was virtually no record of use, except for a handful of artists and musicians. In 1960 and 1961, there was one arrest each year for marijuana possession, eight in 1964, 62 in 1965, 138 in 1966. When the psychedelic epidemic began, it climbed to 8,288 charged with possession of cannabis in 1970-71, with trafficking charges totalling 1,928 in the same year and 20,179 possession charges 1973-74, trafficking 2,713.

Though many argued that there was no progression, cocaine, opium, DMT, liquid hashish, appeared in Canada's major drug centre, Vancouver, in large amounts. Heroin, instead of arriving on the under-world market in ounces as in the pre-1966 era, came in pounds. Seizures by federal RCMP were headlined in the pre-marijuana era as worth \$400,000 (early 1960's) in Vancouver. It was \$117 million in a single seizure in 1974 -- indicating the extent of the new market created through progression.

Two thirds of the users are in Vancouver. Where once a 16 or 17-year-old addict was cause for horror, today Vancouver has 10-year-olds mainlining heroin. Drugs are sold in schools down to elementary levels. It is estimated that two-thirds of the users of cannabis in Vancouver are under 18, the average age being between 15 or 16.

Traffic in drugs is not an underworld activity, but exists in all stratas of society. Cannabis and another drug -- one of violence -- cocaine, are now in social use by the rich and professional classes, as well as the young.

And thus in Canada and in the United States, "as in Egypt, Syria, Iraq and the country of Roum," those who praised and worshipped it, infected the entire nation. The drug habit caught the fancy of so many that today, as in ancient times, the users would not -- and could not -- relinquish it. We spread this incurable infection through pro-and-con debate in public hearings such as the LeDain Commission and the present Senate inquiry. We continue to make it seem to the naive and the young to be a safe, harmless drug, misleading them into the nightmare.

HASAN OF ARABIA AND CHARLES MANSON OF CALIFORNIA

Hasan-Ibn-Sabbah, known as "The Old Man of The Mountain," active in the 1090's, was a vicious, disciplined, anti-Christian fanatic, well educated, said to be a descendent of the Himyarite Kings of

South Arabia. Educated in Egypt, he returned to his native land as an aggressive, ambitious missionary. He organized a secret cult with agnostic philosophy, determined to overthrow previous doctrines. He acquired a strong mountain fortress, the Alamut (eagle's nest) northwest of Qazwin in 1090 AD. There he organized the original assassins, aged 13 to 20. (The words assassin and hashish are believed to have derived from his name.) He taught his army to use the dagger, and refined the art of assassination as political murder. He plunged the Muslim world into terror by using his drugged assassins to murder his erstwhile friend the vizier, Mizam-al-Mulk in 1092 AD, and others.

In exchange for total allegiance, he gave them luxuries in the fortress and lush gardens. Ladies dallied with them. Only those pledged to die at Hasan's command were allowed into the garden. Hasan achieved murder simply by ordering his young disciples: "Go thou and slay; and when thou returnest, my angels shall bear thee into Paradise and shouldst thou die, nathetheless even so will I send my angels to carry thee back into Paradise."

Théophile Gautier, in The Marijuana Papers wrote: "upon waking from their intoxication, the drug users found real life so sad and colourless that they joyfully sacrificed it to re-enter the paradise of their dreams; for every man killed went straight to heaven, while those who escaped were again permitted to enjoy the felicities of the mysterious concoction (hashish)."

Descendents of Hasan still live scattered through northern Syria, Persia, Zanzibar (now known as Tanzania) and in particular, India. They go by the name of Thojas or Mowlas. They are led, not by a blood-thirsty assassin, but by a gentle, well-educated young man, interested in his people. His followers respond by tithing their income to provide him with financial support, a factor that makes this ruler independently wealthy. He claims direct descent from the terrifying grand master of Alamut.

Americans know him as the Aga-Khan.

It is interesting to note the parallel between Hasan's assassins and ex-convict Charles Manson's hippie "family" of homeless, wandering children, gathered together in an old movie set in the desolate mountains north of the San Fernando Valley. His ingenuous harem played like children, fantasized, pretended, dressed for roles and actually talked of make-believe. On Manson's orders, they stole cars, converting them to dune buggies. They rehearsed for crime in what they called "creepy crawlies" dressed in black clothing. They were trained first in burglary, then in murder.

A motorcycle gang member -- Danny DeCarlo -- produced the cannabis plant for the family. They personified the beloved source of their drug by calling the plant "Ernie". "There were enough girls for everyone and I had the time of my life," DeCarlo later testified in a California Court.

Like Hasan, Manson had supreme power. He set out, like Hasan, to obtain complete obedience, to eliminate all inhibitions. It was a simple task from there to turn them into 20th century assassins.

On August 8, 1968, when Manson ordered them to kill, they slaughtered two households of people -- first, actress Sharon Tate, and her unborn child; coffee heiress Abigail Folger, Polish playboy Wojciech Frykowski, hair stylist Jay Sebring, and a teenage guest of the caretaker, Steven Parent; then Leon La Bianca, wealthy market executive, and his wife Rosemary. The Manson "family" did not know any of their victims. There appeared to be no other motive than that of drug zombies doing the devil's work in the same style as the young assassins 800 years ago.

INSECTS KNOW

Insects are smarter than people. They will not go near the cannabis plant -- not even to pollinate it. It is left to the wind.

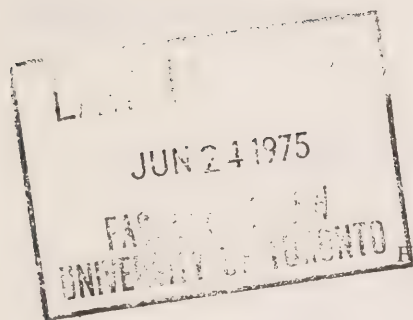
Simma Holt, M.P.,
Vancouver-Kingsway

Investigative Reporter for the Vancouver Sun, specializing over her 30-year writing career in causing improvement in social conditions, and public services and institutions. Specialized in court, crime, correction, prison, parole, social problems, general human interest, working in close association with her subjects whether on the streets of Vancouver, Montreal, New York or San Francisco; death row, hospitals, waterfront, narcotics addiction centres, penitentiaries, half-way houses, schools, -- wherever real life events happen.

Author of three books: Terror in The Name of God, (McClelland and Stewart, 1964, Crown, New York, 1965); Sex and the Teen-Age Revolution, (M & S, 1967) The Devil's Butler, (M & S, 1972). Many magazine articles in Reader's Digest, Weekend, Chatelaine, Macleans, Fair Lady in South Africa, and The Canadian.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 21

TUESDAY, MAY 27, 1975

Fifteenth and Final Proceedings on Bill S-19, intituled:

“An Act to amend the Food and Drugs Act, the Narcotic
Control Act and the Criminal Code”

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Keith Laird, *Deputy Chairman.*

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Quart
Hayden	Riel
Laird	Robichaud
	Walter-(20)

**Ex officio* member

(Quorum 5)

Order of Reference

*Extract from the Minutes of the Proceedings of the Senate,
December 20, 1974:*

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, May 27, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:00 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Laird, McIlraith, Neiman, Prowse and Robichaud. (8)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. R. L. du Plessis, Legal Adviser to the Committee.

The Committee resumed its examination of Bill S-19 intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After discussion, the Honourable Senator Prowse moved that in section 48, under clause 7 of the Bill, all the words in paragraph (b) of section 48(2) at line 40 on page 4 be struck out. The question being put, the motion was declared lost.

On Motion of the Honourable Senator Laird, it was *Resolved* to Report said Bill with the amendments agreed upon at the Committee's meetings of May 6, May 13 and May 20, 1975. The amendments are enumerated in the Report of the Committee presented to the Senate this day, and printed in this day's Proceedings.

At 2:40 p.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Tuesday, May 27, 1975

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code" has in obedience to the order of reference of December 20th, 1974, examined the said Bill and now reports the same with the following amendments:

1. Page 1: Strike out lines 10 to 12 inclusive and substitute therefor the following:

"2. Subsections 35(2) and (3) of the said Act are repealed and the following substituted therefor:

"(2) If, pursuant to subsection (1), the court finds that the accused was not in possession of a controlled drug, he shall be acquitted, but, if the court finds that the accused was in possession of a controlled drug, he shall be given an opportunity of establishing that he was not in possession of the controlled drug for the purpose of trafficking, and thereafter the prosecutor shall be given an opportunity of adducing evidence to establish that the accused was in possession of the controlled drug for the purpose of trafficking."

2. Page 1: Strike out lines 26 and 27 of the French version and substitute therefor the following:

"dans cet endroit, qu'il a des raisons de soupçonner d'être en possession d'une drogue"

3. Page 5: Strike out line 2 and substitute therefor the following:

"offence under subsection (2), he shall be"

4. Page 5: Add immediately after line 6 the following:

"(4) Notwithstanding subsection 2(2) of the *Criminal Records Act*, a person who, after the commencement of this Part, is directed to be discharged absolutely under section 662.1 of the *Criminal Code* for a first offence under subsection (2) of this section shall be deemed to have been granted a pardon under subsection 4(5) of the *Criminal Records Act*.

(5) Notwithstanding subsection 2(2) of the *Criminal Records Act*, where, after the commencement of this Part, a person has been directed to be discharged upon conditions prescribed in a probation order under section 662.1 of the *Criminal Code* for a first offence under subsection (2) of this section and the period for which

the probation order is to remain in force has terminated, that person shall be deemed to have been granted a pardon under section 4 of the *Criminal Records Act* on the date of termination of that period.

(6) Subsection (5) does not apply where a discharge has been revoked under subsection 662.1(4) of the *Criminal Code*."

5. Page 5: Strike out line 23 and substitute therefor the following:

"than fourteen years less one day."

6. Page 5: Strike out lines 34 to 42 and substitute therefor the following:

"imprisonment for a term of not more than fourteen years less one day."

7. Page 8: Strike out line 17 and substitute therefor the following:

"to be a reference to the definition "cannabis", and"

8. Page 10: Strike out lines 9 and 10 of the French version and substitute therefor the following:

"dans cet endroit, qu'il a des raisons de soupçonner d'être en possession d'un stupé"

Your Committee appreciates that its amendment to section 48 in clause 7 of the Bill, set out above as amendment number 4, introduces an exception to the general law under the *Criminal Records Act* affecting conditional and unconditional discharges under the *Criminal Code*. It believes that the application of the principle contained in the amendment might be appropriate in the case of other criminal offences where the court directs a conditional or unconditional discharge for a first offence.

Accordingly, your Committee, in addition to the specific amendments proposed, recommends that the Government consider the advisability of extending to other offences the principle contained in the amendment to section 48 so that where an accused is discharged for a first offence, he shall be deemed to have been granted a pardon either immediately, in the case of an absolute discharge, or on the termination of the period of probation, in the case of a conditional discharge.

Respectfully submitted,

H. Carl Goldenberg,
Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, May 27, 1975

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 2 p.m. to give consideration to the bill.

Senator H. Carl Goldenberg (Chairman) in the Chair.

The Chairman: Honourable senators, following agreement by the committee on the amendments to be made to Bill S-19, our counsel consulted with those in charge of legislative drafting. You now have before you a draft report of the committee which, if it is approved this afternoon, I hope to present to the Senate at the sitting tonight. Shall we proceed by way of questions from honourable senators?

Senator Croll: There is nothing new here.

The Chairman: Nothing.

Senator Croll: There is nothing new, except the last two paragraphs.

The Chairman: That is right.

Senator Croll: The rest we have had.

The Chairman: Senator Asselin, you were not here.

Senator Asselin: I would suggest, Mr. Chairman, that you read the proposed amendments and give explanations.

Senator Robichaud: Are these substantially the same as those we read in the press this morning and heard on radio and television last night?

Senator McIlraith: No.

The Chairman: I did not hear it on radio or television last night. I saw it in the *Montreal Gazette* this morning, in part.

Senator Robichaud: Are they substantially the same?

The Chairman: They are quite parallel, yes.

Senator Croll: Exactly. It is not a question of being parallel. I read it too. There is no secret about it now.

The Chairman: If honourable senators agree, I will give a brief explanation, although I intend to make an explanation when I present the report to the Senate tonight.

Before proceeding, I want to put a question to honourable senators. This is an open session. We have not distributed copies of our draft to the media. We have copies to distribute to them, provided they will observe the note we have made that it is for release not before 8 p.m., Tuesday, May 27, because I propose to submit the report to the

Senate at that time. What is your wish as to its distribution to the media? I will abide by the decision of the committee.

Senator Croll: This is normal. I think we should give it to them now.

The Chairman: Is that agreed?

Senator McIlraith: I assume they are agreeable to that method of handling it.

The Chairman: I will ask them if they agree. If the committee approves this report, I am to present it to the Senate at the sitting starting at 8 o'clock this evening. I have copies for the media, but I must ask that it not be released before 8 p.m.

Senator Croll: The only one that does not pick it up is the *Globe and Mail*. They do not go to press until after 8 o'clock. So do not worry about it.

Mr. Jacques Grenier: Mr. Chairman, if we do not look at your copy but make notes on your deliberations, may we release your deliberations earlier than that?

The Chairman: He is putting me on the spot! Yes.

Mr. Grenier: Thank you.

The Chairman: I do not think I could prevent that. Distribute the copies to the members of the media. Ask them to identify themselves, if you do not recognize them.

Honourable senators, this can be very brief. I will take the amendments in order.

Page 1. This is a purely technical amendment on the reverse onus provision of the bill, to make it conform to the corresponding sections of the Food and Drugs Act and the Narcotic Control Act.

Some Hon. Senators: Agreed.

The Chairman: The second amendment is purely an editorial change, to correct the French translation of one section. Instead of saying

... qu'il soupçonne avec raison ...

it is corrected to read:

... qu'il a des raisons de soupçonner ...

Je crois que c'est préférable.

The third amendment is also a correction. The bill refers to an offence committed under "subsection (1)". This is an error in the printing and it should be "subsection (2)".

The fourth amendment is the first of the major amendments that we have made. It arises from the concern that the committee showed with respect to the fact that for a first offence of simple possession for personal use a criminal record attaches, despite the facts that there may be an absolute or conditional discharge. We therefore propose

that where an accused is discharged under section 662.1 of the Criminal Code on a first offence, he shall be deemed to have been granted a pardon under the Criminal Records Act.

As the law stands now, I repeat, a discharge whether absolute or conditional, does not remove the criminal record. We therefore propose this amendment on page 5 of the bill that in the case of an absolute discharge for a first offence the accused shall be deemed to have been granted a pardon. Under the next amendment, where the discharge is conditional, again dealing with a first offence, he will be deemed to have been granted a pardon on the date of the termination of the probation period fixed under the conditional discharge.

Those are two of the major amendments that the committee approved.

Senator Asselin: Do you think, Mr. Chairman, that it would be in order, after that, to amend the Criminal Records Act to fit in our amendment?

Senator McIlraith: You come to that subject later.

The Chairman: I will just complete this and then open the meeting to questions.

On page 5, line 23, we deal with the penalty for trafficking and for possession for the purpose of trafficking. The bill would reduce the maximum penalty upon conviction on indictment to 10 years. The committee considers trafficking a particularly serious offence and it proposes an amendment to the bill which would increase the proposed maximum to 14 years less one day.

As honourable senators will remember, the reason, for 14 years less one day is to allow the discharge provisions of the Criminal Code to continue to apply in appropriate cases. As we learned, the discharge provisions are not applicable to offences punishable by imprisonment for 14 years.

The next amendment is on page 5 again, dealing with importing and exporting cannabis.

Senator Greene, I think the committee wanted me to go through this and open it up for discussion.

Senator Greene: I was just afraid that, with some of our friends of the Fourth Estate being here, some of your words may be misconstrued.

The Chairman: If they are going to be misconstrued, would you prevent that by making a suggestion?

Senator Greene: It was not to make it easier to discharge that we made it 14 years less a day: it was to enable those provisions which enable a conditional discharge and probation supervision to be available. I do not want our friends, who are less sophisticated in these legal niceties than we are, to report that the Senate wants to have them discharged. We want an opportunity for the discharge and probation provisions to be available.

The Chairman: I am glad you raised that point, Senator Greene.

Senator Croll: I am not so sure. I think that at this point you have total confusion. I do not think you are right.

Senator Greene: It is section 662.

Senator Croll: What is 662? Go ahead. When we come to it, I have a problem, too.

The Chairman: I will get back to that. I can explain more clearly the point Senator Greene has raised, but I do not see why he should suggest that the Fourth Estate is less learned in the law than we lawyers are.

Senator Greene: Only in the fine points.

The Chairman: Only in the fine points? I understand.

I was going on to the sixth amendment, which deals with section 50, importing or exporting cannabis. In this case, Bill S-19 fixes a maximum penalty of 14 years and a minimum penalty of three years upon conviction on indictment. The minimum of three years does not apply where the accused establishes that he imported or exported for his own consumption only.

The committee believes that the courts should not be restricted in any way in the exercise of their discretion in sentencing and, therefore, removes the minimum penalty of three years. The proposed maximum penalty is changed from 14 years to 14 years less one day for the same reason that the maximum penalty was fixed at 14 years less one day for trafficking; that is, to allow the discharge provisions—which I shall explain in a minute—to be applicable.

The remaining amendments are purely technical. The seventh is recommended by the Department of Justice to remove any doubt that the Governor in Council has the power to amend the definition of cannabis.

Honourable senators, before reading the last two paragraphs, which have been drafted pursuant to the recommendation of the committee since the committee last met, I will just make clear what the committee means by conditional or unconditional discharge. Under section 662.1 of the Criminal Code:

Where an accused . . . pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable . . . by imprisonment for fourteen years or for life or by death, the court before which he appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or upon the conditions prescribed in a probation order.

In other words, this is a discretion allowed to the court by the Criminal Code and it is not confined to cases of cannabis or other drugs, but is a general discretionary power allowed to the courts. The Senate committee, in its amendments, is therefore not introducing something new by way of a discharge.

The Senate committee learned that a discharge does not remove the criminal record. To remove the adverse effects of a criminal record, an accused—and we were thinking particularly of youngsters arrested for a first offence of smoking cannabis—must apply for a pardon. He may or he may not apply. Most accused do not apply, either because they do not know about it or because they do not like the investigation involved. Therefore, such an accused may be faced with a criminal record for a first offence for the rest of his life.

That is why the committee recommended that the accused be deemed to have been pardoned if he has been granted a discharge in the discretion of the court, whether absolute or conditional, for a first offence of possession of cannabis.

Senator Croll: Mr. Chairman, when you realize the implications involved in this, it is a tremendous step forward.

The Chairman: Of course. I did not mean that our step was not tremendous. I was trying to say that we did not introduce the discharge provision—it is there—but we are making a tremendous step forward in what we are trying to do.

Senator Croll: The discharge provision is there, except that it is non-operative and has been non-operative up until now. This makes it operative for one special section.

The Chairman: That is right.

Senator McIlraith: When you speak of a tremendous step, you must remember that several of our witnesses, professional people, did not realize that a criminal record continued, even though there had been an absolute discharge. There was controversy on that point; although the law itself is pretty clear, there seemed to be a misunderstanding of what the law presently is on that point.

The Chairman: That is true.

Now, realizing that this recommendation that a person be deemed to have been granted introduces an exception to the general law under the Criminal Records Act affecting conditional and unconditional discharges, the committee believed that the application of the principle might be appropriate in the case of other criminal offences where the court directs a conditional or unconditional discharge for a first offence. Accordingly, the committee, in addition to the specific amendments proposed, recommends that the government consider the advisability of extending to offences other than offences relating to cannabis the principle contained in the amendment to section 48 so that where an accused is discharged for a first offence he shall be deemed to have been granted a pardon either immediately, in the case of an absolute discharge, or on the termination of the period of probation in the case of a conditional discharge.

That, I believe, honourable senators, embodies the decisions of this committee in its study of Bill S-19. Are there any comments, honourable senators?

Senator Croll: As a matter of fact, Mr. Chairman, the hearings would seem to have already had a beneficial effect in our courts, at least in terms of criminal records. In the past couple of weeks in Toronto there have been at least three cases of provincial judges, despite their having found an accused guilty, saying, "Well, I will take a chance on it. Despite what the crown attorney has said, I will give you no record." That is certainly a new approach, although it may be that judges would have liked to do that a long time ago.

Naturally, such progressive thinking did not occur across the whole of the province. There were other places where a few less mature judges took another course. The point is, though, that, in effect, judges have been looking for a provision like this.

The Chairman: It certainly seems so from the evidence of most of the witnesses who concerned themselves with that aspect of the bill.

Senator Asselin: Mr. Chairman, unfortunately I was not present at the last meeting when the definition of trafficking was discussed. Apparently the decision not to change

the definition of trafficking was unanimous. According to that definition, if one person gives a joint to another person he can be charged with trafficking. Bearing that in mind, can you give me the reasoning behind the decision not to change the definition?

The Chairman: Well, three lawyers from the Department of Justice pointed out to us that it would be undesirable to remove the word "give" from the definition of trafficking. I think it is also made clear—I hope I am correct—that if one youngster were to hand a joint to another youngster at a pot party, he would not normally be charged with trafficking.

Senator Asselin: Nevertheless, provision for such a charge is in the law.

The Chairman: It is in the law, yes. The committee gave the matter serious consideration. Indeed, I had the same feeling as you, Senator Asselin, but we decided to leave it as it is and see how it works.

Are there any further comments?

Senator Prowse: Mr. Chairman, the committee is still adamant that it wants to leave second offences in there, is it?

Senator Laird: Yes.

Senator Prowse: I would be prepared to move an amendment to clause 48(2), Mr. Chairman. I would move that all the words in paragraph (b) of clause 48(2), at line 40 of page 4, be struck out.

Senator Laird: Why?

Senator Prowse: In order to get rid of the second offence provision.

The Chairman: Meaning any subsequent offence?

Senator Prowse: Yes.

The Chairman: All those in favour of Senator Prowse's motion? Those opposed? I declare the motion lost.

Senator Laird: Mr. Chairman, I move that we report the bill, as amended.

Senator Croll: Mr. Chairman, just before we do that, I should like to make one comment. I think it was a backward step in the matter of sentencing to go from ten years to fourteen years, but that is what the committee decided on and that is it.

The Chairman: Shall I report the bill as amended, honourable senators?

Hon. Senators: Agreed.

Senator Asselin: Then you will present the report, and the discussion of the report will come tomorrow?

The Chairman: Yes. I think Senator Neiman will move that the report be considered at the next sitting. I will present the report of the committee. I will make some brief explanations of the amendments, and then the Speaker will ask, "When shall this report be taken into consideration?" Then Senator Neiman will move, "At the next sitting of the Senate."

Senator Neiman: Are you tabling it tonight?

The Chairman: Yes.

Senator Neiman: Well, I would not expect to speak to it, perhaps, until the beginning of next week.

The Chairman: No; but you will move it, because you introduced the bill.

Senator Asselin: Is it urgent that we adopt the report in the Senate this week?

The Chairman: No.

Senator Neiman: I will speak to it some time next week.

Senator Croll: It will not be spoken to this evening? You are not speaking to it this week?

Senator Neiman: I doubt it, because I think we already agreed at our previous meeting that we would like a couple of days for all senators to consider the amendments and the report, and we agreed that I would speak to it at the beginning of the following week.

The Chairman: It is entirely up to honourable senators, of course.

Senator Croll: Don't close the debate without giving me a chance.

Senator Asselin: Give me a chance, too.

Senator Greene: Do we have any idea of when the Commons can entertain the bill? I am just afraid of our delaying it, adjourning for the summer, then having it die in the Commons.

Senator Asselin: The session will only be adjourned in June of July.

The Chairman: It will not be prorogued.

Senator Asselin: No.

The Chairman: I would like honourable senators to stay for a brief session *in camera*, but before concluding this session I want, on behalf of the committee, to thank our two research persons from the research branch of the Library, Mr. Hugh Finsten and Mr. Thomas Curren, who prepared various summaries of briefs, reviews, and also analyses of the scientific facts concerning marihuana. They are both here, and I thank them on behalf of the committee.

Senator Croll: Mr. Chairman, I want to thank them too, except that I would not mind if they dated their reports. I had difficulty in finding which report came on which date. I finally decided to base it on the weight of the latest report, and whether the latest report had more in it than the one before. They ought to put a date on their report so that we know exactly how far we have gone. I could not find a date.

The Chairman: We will note that.

At 2:40 p.m. the Committee adjourned.

CA1 YC 24



Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable KEITH LAIRD, *Deputy Chairman*

Issue No. 22

TUESDAY, JUNE 3, 1975

First Proceedings on the Green Paper entitled:
“Members of Parliament and Conflict of Interest”

(Witness and Appendices: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Quart
Hayden	Riel
Laird	Robichaud
	Walker-(20)

**Ex officio member*

(Quorum 5)



Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 10, 1975:

With leave of the Senate,

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Petten:

That the Green Paper entitled "Members of Parliament and Conflict of Interest", tabled in the Senate on Wednesday, 9th April, 1975, be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

Tuesday, June 3, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senators Laird (*Deputy Chairman*), Croll, Flynn, McIlraith, Neiman, Quart and Robichaud.-(7)

Present but not of the Committee: The Honourable Senators Cameron, Greene and Haig.-(3)

In attendance: Mr. R.L. du Plessis, Legal Adviser to the Committee; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee commenced its examination of the Green Paper entitled "Members of Parliament and Conflict of Interest".

The Committee heard the Honourable Mitchell Sharp, President of the Privy Council.

On Motion of the Honourable Senator Croll, it was *Resolved* to print in this day's Proceedings the Policy Statement pronounced by the Prime Minister before the House of Commons on July 18, 1973. The statement is printed as Appendix "A".

On Motion of the Deputy Chairman, it was *Resolved* to print the statement made by the Prime Minister before the House of Commons on December 18, 1973. This statement, along with the related appendix, are printed as Appendix "B" and Appendix "C" respectively.

At 12:10 p.m., the Committee continued *in camera*.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, June 3, 1975

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 11.00 a.m. to consider the Green Paper entitled "Members of Parliament and Conflict of Interest."

Senator Keith Laird (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Members of the committee will recall that the chairman said last week that he would be absent today on official business. If I discover otherwise, of course, I shall get the chairman of the Internal Economy Committee after him!

Senator Flynn: That is very efficient.

The Deputy Chairman: I am a frightfully efficient fellow!

Fortunately, before he left the chairman was able to arrange to have the President of the Privy Council, the Honourable Mitchell Sharp, appears before us, I consider this a very auspicious start to our study of the problem of members of Parliament and conflict of interest.

Mr. Minister.

The Hon. Mitchell Sharp, President of the Privy Council: Mr. Chairman, I thought I might begin with a brief introductory statement, and then, if there are questions that I can answer, I will try to do so. However, I do not claim to be an expert on the subject. Indeed, I do not know any such experts. Everyone has his own views, and perhaps all are equally expert in this area.

The deliberations on which your committee is embarking today are on a subject that has profound implications for the esteem and authority of the Canadian Parliament. Our task—and I say "our" as a member of the House of Commons and as a minister of the Crown—is to work towards a comprehensive set of rules that will have the dual and interwoven effect of guiding members in their personal conduct, and of reassuring the Canadian people that the private interests of members are subordinated to the public interest.

The principles that motivate the development of a policy with regard to conflict of interest are now new. They stem from the very nature of democratic government and have always served as an implicit code of conduct for members of parliaments.

The novel aspect of the present consideration of acceptable standards of conduct is our endeavour to codify them and make them explicit. There are, we believe, many good reasons for a codification based on examination of existing principles and rules; but I think we are all in agreement that the prevailing behaviour of members of Parliament is not one of them. There has been no suggestion that

their standards of conduct have been questionable in any way.

The main reasons why the government has taken the lead in the codification of the conflict of interest guidelines are to aid holders of public office in their endeavours to uphold the very highest standards of conduct and to provide them with the administrative framework through which they can avoid positions of conflict. It has also been considered that it would be unwise to ignore the fact that the increasing complexity and comprehensiveness of public affairs have led to a growing concern with the appearance of conflict of interest. It is no longer sufficient, in our impersonal world, for an individual to assure himself that he is pursuing only the public good; he must be seen to be so doing. Finally, explicit enunciation of standards will provide a measure against which a member's conduct may be judged.

In bringing forward the Green Paper on Members of Parliament and Conflict of Interest, the government has attempted only to provide a framework for discussion of this important matter. For this reason we have presented the proposals in a Green Paper. I am sure senators understand that we have gradations of finality: at one end of the scale is the Green Paper; then comes the White Paper; then comes a draft bill; and finally comes a bill that is presented to Parliament. We have started here with a Green Paper, which means that it is a framework for discussion of policy and proposals on conflict of interest. It is not a final position taken by the government.

This Green Paper, for those of you who have read it, also contains, for the purpose of comparison, a brief treatment of the approaches of the United Kingdom and of the United States. It is pre-eminently for members of Parliament, in both the Senate and the House of Commons, themselves to decide on the standards that will be applicable to them as representatives of the people of Canada.

The Green Paper outlines four central areas that are particularly germane to the functions and responsibilities of members of Parliament, where they might have personal pecuniary interests sufficient to interfere, or to appear to interfere, with their duty to serve the public good.

These areas are: bribery and prohibited fees; incompatible offices; government contracts; and financial interests. Various forms of rules and sanctions are proposed for each area according to the severity with which breaches are to be viewed, the specificity with which they can be stated and the appropriate body to make decisions as to the sanctions to be applied.

The offence of bribery, for example, would remain in the Criminal Code, since the acceptance of bribes is clearly reprehensible, and since the courts have developed an expertise in decision-making in this area. The passage of an Independence of Parliament Act is recommended to cover matters which are not purely internal, but which

have a special relationship to the duties of members themselves. This act would contain, for example, provisions prohibiting the receipt of benefits from government contracts and the holding of various public offices.

It is further proposed that rules that may require ongoing elaboration by the Senate and House of Commons should become Rules and Standing Orders of the respective chambers. Thus, rules prohibiting the receipt of fees for advocating the private interests of others before government bodies and officials and regarding the disclosure of financial interests would be adopted in this form. The Green Paper proposes, in this regard, that a standing committee of each House be charged with a permanent reference to advise the respective bodies of any changes which are needed in conflict of interest legislation, as well as to provide members on request with advisory opinions and to investigate all questions of conflict of interest referred to it. It is our hope that in this way the rules would become increasingly clear and that no member would be left with any doubt as to the standard of conduct expected of him.

In most cases it is recommended that conflicts of interest should be absolutely avoided. There are instances, however, where it would be neither fair nor practical to require total avoidance of conflict of interest. In such cases, such as in the realm of financial interests, the recommended remedy is disclosure of the potential conflict.

Members of this committee are aware that explicit conflict of interest guidelines have been in effect for ministers of the Crown for some time. These guidelines are incomplete; indeed, as the Prime Minister has stated, they are of a temporary nature only, for their final elaboration awaits the building of the foundation on which special ministerial guidelines will rest.

This committee will recollect, I hope, Mr. Chairman, that in the reference made to the Standing Committee on Privileges and Elections it was stated—and I quote from the motion I presented to the House of Commons on December 10, 1974:

That, after the committee has concluded its deliberations and submitted its report on the aforementioned matter, it be authorized to consider and make recommendations upon the subject-matter of ministers and conflict of interest and public servants and conflict of interest.

The government will welcome any special proposals respecting ministers which this committee and the House committee may recommend once the basic rules for all members of Parliament have been formulated.

The Deputy Chairman: Thank you, Mr. Minister.

Senator Croll: Mr. Minister, you made reference to those guidelines that are laid down at the present time, dating, I think, from July 18, 1973. I have a copy of a statement here which I should like the minister to identify, and then I would suggest that it go on the record.

The Deputy Chairman: Mr. Minister, you are looking at what purports to be a copy of the statement by the Prime Minister on conflict of interest.

Senator Cameron: That is very good legalese, Mr. Chairman.

Hon. Mr. Sharp: It appears to me that those are the rules that apply to us.

The Deputy Chairman: Under those conditions, then, is it agreed, as Senator Croll suggests, that this be included as part of the record?

Hon. Senators: Agreed.

(For text of statement, see Appendix "A")

Hon. Mr. Sharp: Mr. Tait points out that on December 18, 1973, there was a further statement of the fourth option concerning disclosure of interest.

Senator Flynn: By the Prime Minister?

Hon. Mr. Sharp: Yes.

The Deputy Chairman: Is it agreed that our clerk should obtain a copy of that and include it in the record?

Hon. Senators: Agreed.

For text of statement, and related appendix, see Appendices "B" and "C")

Senator Robichaud: Would that be the only reference to the matter of conflict of interest as mentioned in the House of Commons? I have July 18, December 10 and December 18, 1974.

Hon. Mr. Sharp: No, Mr. Chairman, there are other references. The particular question raised by Senator Croll was a question of conflict of interest as applying to ministers, and in 1973 the Prime Minister published the guidelines that relate to ministers of the Crown. Of course, there have been many other references to the Green Paper, and the debate I was referring to earlier was on the motion for the reference of the Green Paper to the Standing Committee on Privileges and Elections, at which time I made a statement and there was considerable debate. This was December 10, 1974.

Senator Croll: That was the date you introduced the motion, and it was discussed and each party had something to contribute. In order that we may understand each other, let me read from the Green Paper, which defines conflict of interest in this way:

A conflict of interest denotes a situation in which a Member of Parliament has a personal or a private *pecuniary* interest sufficient to influence, or *appear to influence*, the exercise of his public duties and responsibilities.

The Deputy Chairman: That is from Page 1 of the Green Paper, the third paragraph.

Senator Croll: Is there anything you can add to that, Mr. Minister?

Hon. Mr. Sharp: I would like to add this, Mr. Chairman, that in general we have been guided by a statement made by Mr. Speaker Abbot in a ruling he made in 1811 in the British House of Commons, when he said this:

This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty's subjects, or on a matter of state policy.

The Green Paper does deal with these issues, but I draw attention to that particular ruling which I think still has a good deal of validity. For example, there is a conflict of interest, perhaps, when members of Parliament are deal-

ing with their own salaries. This would appear to involve a conflict of interest, but this is a matter of state policy and it is not a matter of individual pecuniary interest of each person who participates in the debate. In a debate about grain policy, for example, a farmer who takes part in that debate is not in conflict of interest because it involves a general policy relating to all farmers. This seems to me to be the bearing of this ruling by Mr. Speaker Abbot on our discussions.

Senator Croll: There is just one other matter which somewhat troubled me. I can understand the need for cabinet ministers to have special guidelines because their positions are special, but at that point I cannot appreciate how it would affect one man from Vancouver in a different way from a man from Newfoundland, or a member of the House of Commons from a member of the Senate, and why this was not a joint undertaking. By that I mean that I cannot understand why the submission on the Green Paper was not a joint undertaking of the Senate and House of Commons.

Hon. Mr. Sharp: It seemed to us, as a government, that we had a responsibility to try to bring forward as a framework for discussion some general proposals, and that is why I said in my introductory statement that it is only a framework for discussion, because it is for members of Parliament, whether in the Senate or in the House of Commons, to decide for themselves on their own rules. It is important for us, as a government, to know what those rules should be; but, as the Prime Minister has said, we have to build the special rules relating to ministers upon the groundwork of the rules applying to members of Parliament, because while we are members of Parliament we also have special responsibilities.

Senator Croll: You mean as a cabinet minister?

Hon. Mr. Sharp: Yes.

Senator Croll: There is no question about that, but you are drawing a distinction between a member of Parliament and a member of Parliament. We are all members of Parliament, yet the reference in the House of Commons is separate from that in the Senate. That was the point of my question.

Hon. Mr. Sharp: There are in the Green Paper various categories of proposals to deal with the position of a member of Parliament. Some of them relate both to the Senate and to the House of Commons.

The Independence of Parliament Act, that we propose, would deal with both senators and members of the House of Commons. However, each house has its own rules and I do not believe it would be appropriate, for example, for the House of Commons to comment on the Rules of the Senate, or vice versa. These are matters for each house to determine itself. It is quite appropriate, however, for both the Commons and the Senate to comment on the proposed Independence of Parliament Act, because that relates to the independence of Parliament, which includes both the Senate and the House of Commons. In my opinion, the Senate has not as much interest, although it has an interest, in the Canada Elections Act. It might wish to comment upon that, but it relates more to the elected members of Parliament than to senators. So there are various degrees, and I believe the distinction I have made is valid. That is why, in making the proposal, as I did as the President of the Privy Council, I referred the Green Paper to the Commons committee. I could not refer it to the Senate commit-

tee, that being a matter for the Senate to decide. I do hope that we shall hear from both the Senate and the House of Commons as to their views on the proposed Independence of Parliament Act, perhaps upon the Canada Elections Act, on the Criminal Code and other proposals which are before us.

The Deputy Chairman: I have a feeling that Senator McIlraith has some thoughts on the matter.

Senator McIlraith: Mr. Chairman, I wonder if I could ask Mr. Sharp to take a minute or two to discuss some of the rather elementary aspects?

I noticed in your presentation, Mr. Sharp, that you seem to look forward to the situation in which we would be dealing with this subject largely through codification of rules in the House of Commons and the Senate, as distinct from establishing practices which might evolve and be developed from time to time. I think that is probably a fair comment on your presentation and the Green Paper. There is, of course, the Independence of Parliament Act, under which both houses would deal directly, and I understand and appreciate your reference to the position of the government itself and the ministers, and your desire to obtain the views of both houses. However, I am concerned with a subject which has received increasing attention during the last two years. We seem to be willing to trust the drafting of rules to ourselves in each chamber, as the ultimate guardians of the public interest. It troubles me that I still feel—this may seem strange, coming from a senator—that the electors in each constituency really are the ultimate guardians of the conduct of their member in Parliament. In my view, that position must be preserved. It is rather difficult to achieve, but I cannot help remembering, right in this immediate area, during the First World War when a member was forced to resign through the parliamentary process of an investigation respecting a pecuniary conflict of interest. He went immediately to the electorate and was re-elected by the voters who sent him here, he having maintained a good record. I find that right of the voters to be paramount. Yet I do not find myself able easily to reconcile that with the codification of rules proposed by this paper. Would you care to address yourself to that question of where the ultimate responsibility lies? I noticed that later on in your remarks you used the expression that we must decide the rules for ourselves in each chamber, rather than having it decided by the public. I find that a little difficult to accept, because I still like the voter to have the ultimate say.

Senator Croll: You are in the wrong house, George!

Senator McIlraith: I do not believe the Green Paper has dealt sufficiently with that point of the danger of substituting a bureaucratic rule or process, whether by way of a committee of the house or in any other fashion, with respect to a subject which really belongs to the public through the voting process.

The Deputy Chairman: Mr. Minister, would you care to comment on that?

Hon. Mr. Sharp: Mr. Chairman, it is, as Senator McIlraith says, very true that members of Parliament—that is, those who have been elected to the House of Commons—do go through the process of being elected and re-elected. There is a value to this, but I must point out that this is not true of the Senate.

Senator McIlraith: No, I realize that.

Hon. Mr. Sharp: Therefore, the conclusion one might draw from these comments is that it is more important to have standards of conduct laid down in the Rules of the Senate than in the Rules of the House of Commons. I do believe, however, that even from the point of view of the public it is valuable to have certain rules laid down for the conduct of members of Parliament, so that the public itself and the voters in constituencies will have some measure against which to judge members of Parliament who are seeking election or re-election.

I quite agree with Senator McIlraith that it is the function of the public to judge whether a member of Parliament should continue to represent them. However, I do believe that, particularly in this day and age with the increasing intrusion of government into the affairs of business generally, it is wise to have some rules which form a guide to the members. The purpose of these rules is to assist the members themselves in deciding what kind of conduct is acceptable and what is not. This is a very difficult area, as Senator McIlraith notes. Every proposal that come before the House of Commons nowadays has far-reaching implications. The state is spreading its influence everywhere, and when a member of Parliament has to decide what conduct is appropriate for him as a member of Parliament in taking a position in the House of Commons, or in making representations to the government, it is valuable to him to have some standards against which he can judge his conduct. It is not only the matter of how the voters judge him; he would like to know himself that he is acting in an acceptable manner.

Senator McIlraith: That, of course, is expressed in the law in the Independence of Parliament Act, and remedy then is through the courts, so that is fine and I quite understand that concept. However, when we come to the House of Commons and the Senate, each makes its own rules. For instance, they may set up a committee that is paramount and decide whether the electors were right or wrong in sending a certain person here. That seems to me to be a very dangerous principle, because the right of the public to make that decision represented the culmination of a long, hard series of developments. I am not so happy with the rules concept as distinct from legislation by Parliament with the remedies applied by the decision of the courts.

Senator Flynn: What about the case of Fred Rose? You could illustrate your comments with the case of Rose. Rose was convicted of a crime, and the House of Commons decided to expel him.

Senator McIlraith: I would hope that the Independence of Parliament Act would provide for cases of conviction of that sort.

Senator Flynn: He was expelled and could not run again.

Senator McIlraith: I know, and he did not attempt to.

Senator Flynn: I do not think he could have, if my memory serves me correctly.

Senator McIlraith: I have thought about that a great deal. I remember the whole process of his arrest. It is a very interesting point, as to whether or not that type of conduct should have been dealt with by the Independence of Parliament Act. I find no difficulty in enacting new legislation through the Independence of Parliament Act; but I find myself troubled by the concept that each house

may deal with the subject exclusively by rules of its own, because there is an area in the rules which must undoubtedly govern such a situation. There comes an area which surely goes beyond that. For instance, if the House of Commons were to provide a rule—let me give an absurd example—and an official, or clerk, were to pass on the question of whether a member of the House of Commons was eligible to hold his seat because of conflict of interest, and the consequence of their finding that he acted improperly was that he would lose his seat, I would think that is a matter not for the rules, even of the elected people of the House of Commons, but a matter for Parliament. That is the area that concerns me.

The Deputy Chairman: Before we get too far into this as between members, I wonder if the minister would care to comment on Senator McIlraith's remarks.

Hon. Mr. Sharp: Only this, Mr. Chairman, that if you look at page 68 of the Green Paper, concerning the Standing Orders of the House of Commons, there are certain Standing Orders which say:

No member is entitled to vote upon any question in which he has a direct pecuniary interest, and the vote of any member so interested will be disallowed.

Standing Order No. 76 says:

The offer of any money or other advantage to any member of this House, for the promoting of any matter whatsoever depending or to be transacted in Parliament, is a high crime and misdemeanour, and tends to the subversion of the constitution.

And Standing Order No. 77 says:

If it shall appear that any person has been elected and returned a member of this House, or has endeavoured so to be, by bribery or any other corrupt practices, this House will proceed with the utmost severity against all such persons as shall have been wilfully concerned in such bribery or other corrupt practices.

Those, I agree with Senator McIlraith, are very limited and are specifically related to voting, or to bribery, or to a person who obtained his seat by corrupt practices.

In Appendix B, appearing at page 48, you will find a proposed revision of our Standing Orders, in which it is proposed that corresponding provisions be incorporated in the Rules of the Senate. It there sets out guidelines for members, which I agree are different. It was the view of the government that in the circumstances of today it should be clear to members that this is the standard of conduct they should observe, and if they have any doubt about it they should go to the Standing Committee on Privileges and Elections and seek advice. It is a standard against which they judge their conduct. It is as much for the protection of members of Parliament as it is for the protection of the public, so that the member himself will not be charged with having engaged in something in direct conflict with his responsibility as a member of Parliament.

Senator McIlraith: Thank you. I have one other point on which I would like to seek your views. I have thought for some considerable time that one additional facility that we do not have now and should have, and which might be of considerable assistance to members of the government and to members of the Senate and House of Commons, is some kind of statutory trustee who would receive investment assets and manage them for the holder. It is not always practicable for a minister or a member quickly to divest himself of certain investment assets.

Another problem is that the kind of holdings that were possibly not the subject of conflict of interest at one point may very quickly become the subject of a conflict of interest argument at another point. I am thinking, for instance, of uranium in the 1940s. At that time uranium was just a mineral like any other, and there was no possible suggestion of conflict of interest. Suddenly it was placed under control by the federal government because of its nuclear significance. It would obviously be the kind of holding that would indicate a conflict of interest when the government was buying uranium, and so on.

I wonder if you would care to express any view on the creation of such a vehicle or statutory trustee? I use the term loosely at the moment.

Hon. Mr. Sharp: I hesitate to do so, Mr. Chairman, because I am not at all sure how far the Senate or the House of Commons would want to go in this direction. Concerning the members of a ministry, we have a facility rather like that for purposes of what are called frozen trusts. I have taken advantage of this. I have nothing much worth freezing, but such as I have I have put into the hands of the Registrar General—the assistant deputy Registrar General. He and I have signed an agreement. I have frozen those small investments.

Senator Croll: What do you mean by “frozen”? Do they remain as is, or can only he deal with them?

Hon. Mr. Sharp: He cannot deal with them, and I cannot deal with them. It is a guarantee that they remain frozen.

Senator McIlraith: What is his authority to do that?

Hon. Mr. Sharp: I am not quite sure how he was given the authority, but he has it. I have entered into this trust agreement and the assets are frozen there. They are now listed in his name rather than mine.

Senator McIlraith: it seems to me that some development along that line—not necessarily freezing—to create a receptacle, if you like, for the receiving of assets, managed by the trustee, with certain statutory powers given to the trustee, might be helpful in this area. We may have a little light in the Green Paper. It is an area which deserves additional study along this line.

Senator Cameron: Is this arrangement similar to what is called a blind trust?

Senator McIlraith: No.

Hon. Mr. Sharp: There are two kinds of trust provided for in the guidelines applying to ministers, one being the blind trust, which is a trust in which the management of the investment is turned over to someone independent of the holder of the securities. Thereafter, the holder of the security gets a report on his earnings at the end of the year for income tax purposes, but he has no control over the investment. This has been selected, I understand, by some of my colleagues as being appropriate to their positions. Others, like myself, who have so little have not selected that because it would not pay us to pay the fees on a blind trust. For that reason, I have simply frozen my very small holdings in order to avoid any conflict of interest.

Senator McIlraith: Dealing with the blind trust, would the trustee be a public official?

Hon. Mr. Sharp: No, the holder of the securities would employ a trust company, or something of that nature.

Senator Croll: If the portfolio is frozen and one of the stocks suddenly increases 20 times in value, you cannot get it out and sell it?

Hon. Mr. Sharp: No. The portfolio is frozen as long as the holder remains in the ministry.

Senator Croll: You can put your holdings into a blind trust by agreement, or you can freeze them by agreement. Can you not ever change the agreement on the frozen trust?

Hon. Mr. Sharp: Apparently not. The idea is that the holder is not to have any discretion in the handling of his investments. They are to remain frozen, regardless of whether they go up or down in value, until he or she leaves the cabinet.

Senator Flynn: Do you have a printed form of agreement in this respect?

Hon. Mr. Sharp: Yes.

The Deputy Chairman: Would it be feasible, Mr. Minister, for the committee to have the benefit of the form of agreement in the course of our deliberations?

Hon. Mr. Sharp: I see no difficulty about that at all. I will see whether I can obtain a copy.

Senator McIlraith: It seems to me that ministers are being unjustly treated in two ways. You mentioned small holdings. If a minister had acquired penny stocks in the 1930s, when they were almost worthless, for him not to be able to liquidate those stocks in his interest is pretty harsh treatment. The price of gold has risen very sharply. Also, they are being treated unjustly in that those who turn their investments over to a blind trust are required to pay the fees of the trustee.

Senator Croll: Well, it is probably about 5 per cent.

Senator McIlraith: It can be fairly substantial in some cases.

Senator Robichaud: Would Government of Canada bonds have to be placed in a blind trust or a frozen trust? The interest is paid by the Government of Canada.

Hon. Mr. Sharp: No. This is the freezing of investments in private companies, or any investment which might result in a conflict of interest. It is assumed that there is no conflict of interest in holding Government of Canada bonds, or the bonds of other governments, or in having bank deposits or anything of that nature. Assets of that kind are assumed not to lead to any conflict of interest. The kinds of investments that are frozen or put into blind trusts are those which might conceivably influence decisions made by the ministry.

Senator Greene: Mr. Minister, what if there is an item in the frozen portfolio that is harmless at the time of freezing but which might result in a conflict of interest as a result of the government going into that business at a later time? For example, if you hold shares in a uranium company which are harmless at the time of freezing, but the government then goes into the uranium business, at that instant, whether they are frozen or not, there is a conflict. Those shares are still held in the portfolio, are they?

Senator Croll: How would you have a conflict? Let us say you had a million shares of uranium which you obtained before becoming a cabinet minister and those

shares were placed in a frozen trust, what difference does it make what the government then does? You have done all you possibly can. There was no conflict when you entered the ministry. If you played by all of the rules, what difference does it make?

The Deputy Chairman: In any event, the minister has said that it is not possible to "melt" them. They are frozen—period.

Senator Flynn: But the minister, in a case like that, could not adopt any policy which would restrict the trade or increase the price of uranium. For instance, if you had that number of shares in uranium, you would not have refused to sell uranium to France or you would not have been inclined to refuse.

Hon. Mr. Sharp: I should perhaps explain that none of my assets is of that kind. Indeed, when I entered the Cabinet in 1963 I had some shares in various companies. I disposed of all of those shares, with the exception of a small block of stock in a company of which I was a founding member. At that time it was not clear whether the company would be a viable enterprise or not, and I was reluctant to go to my friends and ask them to take the stock off my hands, so I decided that rather than do that I would just leave that block of shares alone and not deal in it at all. These are the kinds of situations that can arise.

Senator Croll: I hope they have improved in value.

The Deputy Chairman: In any event, this is the sort of thing which members of the committee will have to discuss and on which they will have to arrive at some conclusions.

Senator Robichaud: Mr. Minister, I believe you mentioned something about the disclosure of assets that could lead to a potential conflict of interest. I understood you to say that there are marginal assets which may or may not lead to a conflict which do not have to be frozen but which do have to be disclosed.

Hon. Mr. Sharp: Those investments which do not cause any conflict of interest have been defined. As I recall them, they are holdings of government bonds, bank deposits, your own house, and that type of thing. The kinds of investments that must be put into trusts are investments in companies that could benefit, or otherwise, from a decision on the part of the government. Although the conduct of the government might affect the value of government bonds, it is assumed that there is no conflict of interest from holding government bonds.

Those investments that could result in a conflict of interest are holdings of land, holdings of stocks or bonds of private companies. All investments of that nature are the subject of the rules that have been laid down by the Prime Minister.

Senator Robichaud: There is a category of assets, is there not, that you must disclose, but which must not necessarily be disposed of or frozen?

Hon. Mr. Sharp: No. Members of the Cabinet are not required to disclose their wealth; they are only required to freeze or put into a blind trust investments that might cause a conflict of interest insofar as government decisions are concerned.

Senator Robichaud: Dealing with those assets which one must disclose but which do not necessarily have to be

disposed of or frozen, what form of disclosure takes place? Do you file a statement with the Clerk of the House of Commons, or the Speaker of the House of Commons, or how do you go about it?

Hon. Mr. Sharp: There are no rules for the disclosure of assets in the House of Commons or in the ministry. There are some proposals in the Green Paper about the disclosure of holdings in particular companies with which the government has contracts. These are set out in the Green Paper. As far as the ministry is concerned, the Prime Minister has laid down guidelines, which have now been incorporated into the record, relating to the investments of ministers. As far as I know, all ministers have complied with those guidelines. However, they do not include the disclosure of all assets. In other words, it is not a test of how wealthy you are. The question is whether your assets are held in such a form that there might be a conflict of interest. Insofar as there could be a conflict of interest, there are rules relating to the placing of those particular investments in trust. I believe also, although it did not relate to me particularly, there is another option about disclosure.

Mr. J. C. Tait, Legislation and House Planning Secretariat, Privy Council Office: There is an option open to ministers to disclose certain assets, if they so wish, rather than put them in trust.

Senator Robichaud: To whom do they disclose them?

Hon. Mr. Sharp: To the Prime Minister and to the public.

Senator Robichaud: It is no longer confidential?

Senator Croll: Is it not more than the Prime Minister? Is there not a registrar?

Hon. Mr. Sharp: Yes. I did say to the public also. However, it is primarily to the Prime Minister, and then that is published. For instance, you can look up the records and find that I have a frozen trust.

Senator Flynn: Furthermore, there is voluntary disclosure by members of the House of Commons to the Clerk of the House. I know of two or three members who have done that; they have disclosed all their interests, and the Clerk has, let us say, a financial statement from those members.

Senator Robichaud: I am a senator. I do not have assets, but suppose I do and I want to disclose them, I feel conscientiously that I should disclose them, who would I go to? Would I go to the chairman of this committee, to the Clerk of the Senate, the Speaker of the Senate?

Senator Croll: We will arrange for somebody. It could be the registrar.

Senator Flynn: If you insist on it, we will find somebody.

Senator Croll: There will be somebody. It is not so much your disclosure as the fact that it has to be private and it does not get out. That is the trick about the whole business. No one else is entitled to it except you and the man you give it to.

Senator Robichaud: But it becomes public information.

Hon. Mr. Sharp: So far as the ministers are concerned, all the information that has been provided becomes public. In other words, if you look at the list—although I have not looked at it—I am sure you will find that I have a

frozen trust, and that other ministers have blind trusts. I do not know whether any of them have taken advantage of the disclosure rule. I have not examined the records. Have you, Mr. Tait?

Mr. Tait: I have not examined the records, but I do know that some ministers have.

Senator Croll: Some of them have disclosed; half a dozen of them made disclosure: they said they owned their houses, this and that and that was it.

Senator Flynn: Disclosure to the Clerk of the House of Commons can be examined by any other member.

Senator Croll: That is right.

The Deputy Chairman: Is that not a matter, now having been informed as to the procedure involving cabinet ministers, that we should consider, whether or not it should be applied to members of Parliament which includes us, of course?

Senator Cameron: Take a situation in connection with pipelines. Alberta Gas Trunk Lines is becoming involved with government financing. Some people had shares in Alberta Gas Trunk Lines before there was any government involvement. There will now be government involvement. What is the position there?

Senator Croll: I think the usual rule is 5 per cent, and few of us have that much.

The Deputy Chairman: Not in an enterprise of that size. Are there any other questions?

Senator Flynn: This is not perhaps a question so much as a comment. The minister has referred to the definition of conflict of interest, which refers to a personal pecuniary interest sufficient to influence or appear to influence. "Appear to influence" is quite an expression, and it evokes the wife of Caesar, who, according to him, should not only be above suspicion but appear to be above suspicion. People do not realize it, but Caesar used that word just to get rid of her. Maybe that should be a warning to us!

The Deputy Chairman: I should also draw to your attention, Senator Flynn, the old legal maxim, if you want to call it that, that not only must justice be done but it must be seen to be done

Senator Flynn: Or appear to be done. It is the same thing.

The Deputy Chairman: Are there any other questions? ... If not, I would ask members to meet with me *in camera* for five minutes.

Thank you, Mr. Minister. We are grateful to you for giving us a good start to our deliberations.

Senator Robichaud: I have one final question. I was wondering last week which minister was still in command

of the situation with respect to conflict of interest. Is it you, Mr. Minister?

Hon. Mr. Sharp: I have the responsibility.

Senator Robichaud: I thought Mr. MacEachen was the man in charge at one point.

Hon. Mr. Sharp: The reason this paper is signed by Allan MacEachen, who was my predecessor in office, is that it was introduced twice. It was introduced in the former Parliament, and I re-introduced it in the present Parliament. I had no reason to change the recommendations, so I simply once again submitted the paper signed by my predecessor.

The witnesses withdrew.

Senator Croll: Mr. Chairman, before we sit *in camera*, I have some remarks to make that I wish to appear on the record.

The Deputy Chairman: Senator Croll has something to say before we continue *in camera*.

Senator Croll: I have a submission to make. Last week we were discussing the advisability of hearing some people on this very important matter.

The Deputy Chairman: We did discuss that *in camera*.

Senator Croll: What I have to say need not be discussed *in camera*. We may discuss it *in camera*, later, in deciding what to do.

Before I say what I have to submit, I suggest that there is quite a serious demand for Senate reform. The Prime Minister, who has been talking about it, is quite serious. I think that at the present time there are nearly a dozen vacancies in the Senate that he has not filled, and, from what I understand, he is not going to fill them until such time as we are prepared to deal with this and some other problems.

For years and years I have heard from all corners of this country shouts about the conduct of the Senate in various ways, particularly concerning conflicts of interest, lobbying and what-not, and it occurs to me that we ought in some way to be able to shorten the distance between us and the community.

My submission is that we ought to invite to appear as witnesses such people as the head of the Council of Churches, the head of the labour movement, of farmers, of the Canadian Bankers' Association, the Conference Board in Canada, the Institute on Research, the Canadian press, the heads of the trust companies, insurance companies, accountants, advertising people. These are people who deal with government and its conduct. We hear complaints from them from time to time, whenever the occasion arises. We ought to have their views on how they think we ought to be conducting ourselves. That is my suggestion at this time.

The committee continued *in camera*.

APPENDIX "A"

STATEMENT BY THE PRIME MINISTER
ON CONFLICT OF INTEREST
HOUSE OF COMMONS, JULY 18, 1973

[Text]

Mr. Speaker, yesterday the President of the Privy Council laid upon the table the government's Green Paper on proposals for a policy governing conflict of interest in relation to Members of Parliament and Senators. In considering the problem as a whole, the Government gave special attention to standards which would apply to Cabinet Ministers.

The Government believes that no higher standards should be demanded of anyone than of Ministers themselves. They would, of course, as Members of Parliament or Senators, be subject to all the provisions that would apply to members of those bodies, whether by law, by resolution or by custom. Because of their unique duties and responsibilities, Ministers should, however, be required to conform to a series of guidelines which impose added restraints, particularly in relation to pecuniary interests. The government has concluded that guidelines are preferable to additional legislation specifically relating to Ministers since certain aspects of conduct cannot readily be defined except in relation to particular circumstances. An element of discretion, to be exercised by a Minister on the basis of discussion with the Prime Minister of the day, seems the best solution.

Our policy leaves each Minister with a heavy onus to conduct his personal affairs in a manner which must not conflict or appear to conflict with his public duties and responsibilities. We recognize, however, that in some cases persons who may be invited by the Prime Minister to join the Cabinet may be men and women who have property or holdings of some magnitude. This should not of itself exclude anyone from service in the government. The question is how to ensure that business, commercial, financial or professional interests do not conflict with the public interest which must be the prime responsibility of every Minister.

It is important that a Minister not be called upon to take decisions in a private capacity which would place him in a situation of appearing to use inside information to the advantage either of himself or of any associates in corporate or other business activities. A Minister, therefore, will be expected in future, as is the policy today, to resign any directorships in commercial or other profit-making corporations that he may hold before becoming a Minister. In certain circumstances it may be necessary for a Minister to discontinue service on boards of philanthropic or charitable organizations, but normally these are considered to be compatible with ministerial office and will so be considered, as a general rule, in the future.

Because of potential conflicts and also because ministerial office is and must be a full-time job, Ministers are being asked to sever all active business, commercial or professional associations during the time that they remain members of the Cabinet.

With regard to a Minister's ownership of corporate shares or other financial interests, great caution must be exercised, not only in the making of investments, but in the management and control of them. In some cases, because of the nature of a Minister's responsibilities in relation to particular categories of business or property, it may be required that a Minister totally dispose of an

investment. In other cases, Ministers will have the option of placing in trust their holdings of a business, commercial or financial nature and particularly their holdings in commercial entities that could be directly affected as to value by decisions of government policy. Two forms of trust will be permitted. The first will be one in which the trustee will be instructed to maintain the holdings precisely as they were when the trust was established. This may be desirable because of the particular nature of some property. The second kind of trust will be one in which the trustee will be empowered to make all investment decisions with no direction or control by the Minister. In this type of trust, to ensure freedom from conflict, there will be no information to the Minister except for information that would be required to permit an annual evaluation of the trust or the filing of any information required by law. In both cases, the Minister will be empowered to receive from the trustee the income earned by the trust. If the second form is used, he will be able to add to or withdraw capital funds as he sees fit.

[Translation]

Ministers' spouses and their families are not being required to follow the strict rules that are being set out for Ministers themselves. This is simply not practical and may not even be just. However, it is recognized that the rules or principles with regard to conflicts of interest could be evaded by transfers of property to a spouse or dependant child. The only solution appears to be to make clear the individual responsibility of a Minister with regard to the handling of his affairs in order to avoid conflicts of interest. It is up to the Minister, within the spirit of the guidelines, to have regard for the possibility of a conflict of interest arising or appearing to arise from dealings, as regards the ownership or management of property, in which his spouse or dependant children may be involved. This responsibility is being made clear and specific.

Finally, a Minister has an obligation to seek the advice of the Prime Minister on any matter concerning a conflict of interest about which he may be in doubt.

In all other respects Ministers will be governed by whatever decisions Parliament arrives at with regard to Members of the House and Senators. It is our belief that, by combining the requirements of law and of Parliamentary resolution with the guidelines, a clear standard will be in place against which the conduct of members of the Government can be measured.

Much of what I have outlined with regard to the conduct of Ministers has been the policy of the present government and that of my predecessor for several years. Individuals on becoming Ministers have been urged to give up directorships in commercial entities and I referred in August 1968, to the basic policy of disposal or of the establishment of trusts in cases where conflict could arise. What is being done now is to give greater precision to this and especially to the requirement that there be either disposal or one of the two types of trust to which I have referred. Ministers are being asked to ensure that any arrangements that do not accord at the present time with these rules will be made to accord with them in the course of the next few months. The rules themselves will be put in the form of precise guidelines just as soon as Parliament has had an

opportunity to consider the Green Paper with regard to Members of Parliament and Senators and the legislation that might be made applicable to them. It is quite possible that the general views of Parliament on matters of principle and the specific provisions that are judged necessary or desirable for Parliamentarians should influence the final formulation of the guidelines.

[Text]

We recognize Mr. Speaker, and I am sure that Members in all corners of the House will agree, that the measures which the government has announced may not be the entire answer to a very perplexing problem. This is why the government has placed its proposals related to Members of Parliament and Senators before the House for its

consideration. We would hope that, after study of the problem in Committee and after receiving comments from Honourable Members, an Independence of Parliament Act will be introduced and passed in this House. The announcement of the government's policy is a first step only.

The government is at the moment actively considering the proper steps to be taken with regard to the Public Service and those appointed to various offices by the Governor General in Council. These are complicated because the situations can be so various—all the way from the holders of judicial or quasi-judicial office to the clerks or stenographers in government departments. It is my hope to announce measures applicable to these groups in the near future.

APPENDIX "B"

Tuesday, December 18, 1973

CONFLICT OF INTEREST

STATEMENT ON GUIDELINES FOR PUBLIC SERVANTS AND ORDER IN COUNCIL APPOINTEES

Right Hon. P. E. Trudeau (Prime Minister): Mr. Speaker, in my statement on July 18, 1973, concerning conflict of interest, I outlined standards of conduct which would apply to cabinet ministers. On July 17 my colleague, the President of the Privy Council (Mr. MacEachen), had earlier announced government policy concerning Members of Parliament and Senators and indicated that it was his intention to refer the government's green paper to a standing committee. The Standing Committee on Privileges and Elections has been heavily involved with other matters, as the House knows, until now. However, it is my understanding that the President of the Privy Council may be able to move that the green paper be referred to that committee this week. I know that members will give this matter very careful attention when the motion for the reference is taken up in the House and, later, in the committee.

In July I also indicated that the government was actively considering the proper steps to be taken with regard to the public service and those appointed to various offices by the Governor General in Council. I wish today to announce the government's policy in that regard.

Canada can take pride in her public service and in the individuals who serve within it. In any large organization, however, it may be necessary from time to time to give direction as to the manner in which people must conduct themselves in the course of their employment. In these matters it is as much a benefit to the employee as it is to the employer to have clear standards apply.

The government believes that in setting standards it is important not only to protect the public interest adequately but also to protect the rights of those who are affected by the standards. We have opted, Mr. Speaker, for a series of guidelines which have been incorporated in an Order in Council covering all employees in the public service which, with the permission of the House, I now table.

Central to our policy is the principle that it is not sufficient for a public servant merely to act within the law. We believe that there is an obligation to act in a manner so scrupulous that it will bear the closest public scrutiny. Public servants, therefore, must not place themselves in a position where they are under obligation to any person who might benefit from special consideration or favour on their part or seek in any way to gain special treatment from them. Equally, a public servant must not have a pecuniary interest that could conflict in any manner with the discharge of his official duties. Public servants will be expected, as are ministers of the Crown, upon appointment to office, to arrange their private affairs in a manner that will prevent conflicts of interest from arising if there is any risk of that occurring.

Public servants are being asked to exercise care in the management of their private affairs so as not to benefit, or appear to benefit, from the use of information acquired in the course of their official duties that is not generally available to the public. In matters of contract, public servants must not place themselves in a position where they could derive any direct or indirect benefit or interest

from a government contract over which they can influence decisions. Regarding outside employment, public servants are being asked not to accept outside office or employment that could place on them demands inconsistent with their official duties or call into question their capacity to perform those duties in an objective manner. In the performance of their official duties, public servants must take great care to ensure that no preferential treatment is given to relatives or friends or to organizations in which they or their relatives or friends have an interest, financial or otherwise.

[Translation]

Our policy, Mr. Speaker, clarifies for the public service responsibilities, which although they are not new or additional to the traditional ones long understood by public servants, are being made clear and formally published at this time. In order to assist public servants in determining where areas of conflict of interest may arise, particularly in areas related to business, commercial or financial interest, we are asking that public servants disclose in confidence, all business, commercial or financial interests where such interest might conceivably be construed as being in actual or potential conflict with their official duties. The onus to disclose such interests and to determine where such interests might be construed as being in conflict with official duties, is being clearly cast upon the public servant himself. Only those matters which the public servant believes are in actual or potential conflict of interest will require disclosure.

As with public servants, it is our belief that, for their guidance and for the protection of the public interest, those appointed to office by the Governor General in Council should be provided with guidelines. Officials appointed by order in council will in general be required to adhere to standards which will approximate those which have been decided upon for Cabinet ministers. These additional standards, and indeed all standards, must be viewed not as abrogating from any specific legislative provisions, but as complementary to them.

There is a broad range of positions to which appointments are made by order in council. Five broad groupings have been made: appointments to judicial and quasi-judicial boards, agencies and tribunals; appointments to positions where the holders report, or are directly responsible, to Parliament (servants of Parliament); appointments to senior positions in Crown corporations and autonomous agencies; appointments to the major operational and policy positions of the government; and appointments to a host of miscellaneous positions which do not clearly fit into any of the other groups.

The nature of the duties performed by these officials, with few exceptions, set this group apart from the rest of the public service and require that more stringent rules apply to them in dealing with their personal affairs. We believe, Mr. Speaker, that generally no less stringent standards than apply to Cabinet ministers should apply to this group.

In more specific terms, the servants of Parliament, and appointees to the major operational and policy positions, should have precisely the same standards apply to them. Appointees to senior positions in Crown corporations and

autonomous agencies should also be the subject of the same general guidelines as for Cabinet ministers, with specific requirements to be promulgated by the ministers responsible to Parliament for a Crown corporation or agency. For miscellaneous positions, which cover a broad range of duties, functions and responsibilities, responsible ministers are being asked to examine the particular positions falling under their jurisdiction with a view to promulgating such guidelines as seen best to meet the needs of the position itself.

[English]

With regard to appointments to judicial or quasi-judicial boards, agencies and tribunals, it is our hope to extend the same general guidelines. There are, however, some legal problems. I have asked that the Minister of Justice (Mr. Lang) review this matter with a view possibly to recommending amendments to existing legislation to bring it into conformity with established standards of conduct.

Members will recall that in my statement to the House in July I indicated that ministers would have three options open to them in dealing with property other than residences, automobiles and other things of a personal nature of that kind. These were: total divestment, the use of a frozen trust or the use of a blind trust. After further consideration, the government has decided that a fourth option should be added to the three just mentioned. This fourth option will apply to cabinet ministers and to Order in Council appointees who are being included under the ministerial guidelines.

The option will provide for the registration of a declaration of ownership of property with a registrar who will be appointed for this purpose and for the purpose of assisting ministers and others in dealing with matters covered by the government's policy on conflict of interest. It will be possible for a minister, or other persons under the same rules, to deal with property so registered. Declarations and the details of the property covered by them will be open for public inspection in the office of the registrar. The property which may be registered under this fourth option will depend on a number of factors including the nature of the property, whether its value might be affected by decisions of government policy and whether the property could even remotely give rise to a conflict of interest situation. This arrangement, and the scope for individual management it provides, will not be available for stocks and securities traded on public stock exchanges.

The government has also decided that the categories of property exempt from treatment under one of the four options should be extended to include bank balances, Canada savings bonds and securities of any level of government in Canada and agencies of any government. It is apparent that a conflict of interest cannot arise from any such holdings.

[Translation]

We have concluded, Mr. Speaker, that as a matter of policy the subject of standards and procedures for employees of Parliament should also be considered at an appropriate time. We would recommend that standards and procedures for employees of the House of Commons be referred to the Commissioners for Internal Economy and for employees of the Senate, to the Committee on Internal Economy, Budgets and Administration, It is our

hope that an examination of those groups may be undertaken at an early date.

With regard to the employees of Crown corporations, whether appointed by order in council or not, we are of the view that standards similar to those which I am announcing today for the public service should be developed. Crown corporations and agencies will be urged to develop further standards and procedures within their own organizations, which in the view of the corporation or agency and the minister responsible for it, best meet the operational requirements of the corporation or agency and the employee positions within it.

These guidelines will not, of course, be any substitute for the qualities of honesty and integrity, long recognized as a hallmark of Canada's public service. But we are confident, Mr. Speaker, that they will assist public servants and officials in the performance of their official duties and in knowing with greater certainty what limits must be imposed on their private interests. Details of the administrative arrangements are currently being worked out by the President of the Treasury Board. He will shortly be sending a circular letter to all heads of departments and agencies explaining the administrative arrangements which are required to give effects to the guidelines.

[English]

Hon. Robert L. Stanfield (Leader of the Opposition): Mr. Speaker, at the outset may I suggest that since the guidelines the Prime Minister has tabled are quite short they be printed in *Hansard*? I wonder whether this would meet the approval of the House.

Mr. Speaker: Is this agreed?

Some hon. Members: Agreed.

[For text of Order in Council containing guidelines, see Appendix "C"]

[Translation]

Mr. Stanfield: Mr. Speaker, I welcome wholeheartedly the Prime Minister's statement. It deals with a most important subject. I recognize that it is not possible to eliminate entirely all possibilities of conflict of interest. Still, I should like to make a few comments on the Prime Minister's statement.

[English]

With regard to the part of the declaration related to the public service in general in which provision is made for the disclosure of conflict of interest, the Prime Minister makes it very clear that the onus to disclose such interest and to determine where such interest might be construed as being in conflict with official duties is clearly being cast upon the public servant himself.

I recognize the high quality of our public service. I recognize that ultimately, in the final resort, the elimination of conflicts of interest depends upon the exercise of our own final, fundamental judgment. Nevertheless, I recognize also that in many ways a person may be the poorest possible judge of potential conflicts of interest in his own case. Therefore I have to say I am not satisfied with leaving it entirely to the public servant himself or herself to be the sole judge whether or not there is a

potential conflict of interest, since I think such a person is not a sufficiently good judge of that situation. I should like to see the appropriate committee of the House examine this problem, which I recognize is complex and difficult, to see whether or not there is not some more satisfactory way in which it can be resolved.

I must also say that, as was the case with the guidelines laid down for ministers, there is nothing concerning the spouse or minor child of a public servant. I believe a case of conflict of interest is just as likely to arise as a result of property or investments owned by one's spouse or, indeed, one's minor child or children, as in the case of an individual. Therefore I must say that this also appears to me to be another instance of gross inadequacy in the guidelines.

I note, too, that there does not seem to be any particular reference to the staffs of ministers or even to the senior staffs in the offices of ministers, though in the statement of Prime Minister Pearson in 1964 this was a matter of special concern. It may be that staff attached to a minister are intended to be covered by the rather omnibus clause under which it is to be left to the judgment of the individual minister to decide what are the appropriate guidelines. But even if such personnel were covered by this omnibus reference, I would not regard this as adequate in view of the importance of the position of those on the personal staffs of ministers. I regard this also as another defect in the guidelines put before the House today.

Since the guidelines for Order in Council appointments are the same as those for ministers, I must repeat that one of the options, that of the frozen trust, mentioned by the Prime Minister in his previous statement does not seem to me to be appropriate unless it is also associated with disclosure. In other words, I would not regard a frozen trust as an appropriate device for overcoming possible conflicts of interest unless it is also associated with disclosure. I am distinguishing in this connection between a frozen trust and a blind trust. I repeat that, since these guidelines apply to all Order in Council appointees as well as to ministers, the failure to deal with the spouses and the minor children of these appointees is a very grave shortcoming in respect of these guidelines as it was in respect of the guidelines the Prime Minister originally laid down for ministers.

While I am pleased to hear this statement and regard it as a substantial step forward in dealing with a problem of great public concern, I believe the guidelines outlined by the Prime Minister today have the substantial shortcomings I have mentioned. I should like to see these matters considered further by the appropriate committee of the House, and I would certainly be disappointed if the guidelines are left in this state which I consider quite unsatisfactory.

Mr. Stanley Knowles (Winnipeg North Centre): Mr. Speaker, we welcome the concern of the government about the problem in respect of conflict of interest which has been reflected in the fact that we now have been given three statements on the subject. We had the statement and the green paper presented to the House by the President of the Privy Council (Mr. MacEachen) on July 17 concerning members of parliament, we had the Prime Minister's statement on July 18 concerning cabinet ministers, and now we have the Prime Minister's statement about public servants and others who are government appointees in one way or another.

We also welcome the fact that the subject, at least in general terms, is to be referred to the Standing Committee on Privileges and Elections. We feel that the discussions which will take place in that committee are extremely important.

I must say, however, that a word the Leader of the Official Opposition (Mr. Stanfield) used on July 18 certainly deserves to be used again today. He described the Prime Minister's statement of that day as "murky". I suggest that today we have about the murkiest Order in Council I have ever seen. When one listens to the Prime Minister and hears him say that in a moment or two he will be tabling an Order in Council, one assumes that the Order in Council will fill in the gaps, spell out the details, and that it will include some definitions, some clear principles and the means of enforcement. I was pleased that the Leader of the Opposition asked that the Order in Council tabled today be appended to *Hansard* in order that those who read these remarks will be able to read that Order in Council and discover that it is nothing more than a précis of the Prime Minister's statement.

Orders in Council usually provide some detail and some regulations with the force of law and, indeed, usually provide means of enforcement or penalties, but in this Order in Council, P.C. 1973-4065, December 18, 1973, there is not one word of definition, there is not one point spelled out in detail and there is no provision of any kind for enforcement. It is nothing more nor less than a statement of desires. Let me read one or two sentences:

No conflict should exist or appear to exist between the private interests of public servants and their official duties.

Another states:

All public servants are expected to disclose to their superiors, in a manner to be notified, all business, commercial or financial interests where such interests might conceivably be construed as being in actual or potential conflict with their official duties.

It goes on to point out that public servants should not do this and should not do that. But there is no detail, no clear definition, concerning what it is that is permitted or what it is that is prohibited. Certainly there is no suggestion of any way in which these so-called guidelines are to be enforced. I submit, therefore, that the Order in Council is of no more value than the statement the Prime Minister read to the House today.

I join with the Leader of the Opposition in expressing concern over the extent to which in the Prime Minister's statement as well as in the so-called guidelines everything seems to be left to the individual public servant. I think this is unfair to the public and also unfair to the public servant. I note this sentence in the paragraph in the Prime Minister's statement having to do with disclosure:

Only those matters which the public servant believes are in actual or potential conflict of interest will require disclosure.

I ask frankly, of what earthly use is that kind of a guideline where in the final analysis it is left to every individual public servant to decide whether the interests he has are such that he should disclose them? As the Leader of the Opposition said, surely the poorest judge of one's own conduct is the person himself, and yet that is the way this has been drawn up. I recognize it is the Prime Minister's statement, but anyone in his position has to receive help in the drafting of such statements. I wonder

what senior public servant drafted this particular statement?

It seems to me—and here I go along with the Leader of the Opposition or perhaps a little farther—that the only solution in all these areas, in respect of members of parliament, cabinet ministers or public servants, is to go for full disclosure. This so-called option of disclosure and option to register certain holdings and so on will not fill the bill. Those involved in decision-making, so far as public servants are concerned, should be required to come through with full disclosure. I hope that even yet the thinking of the government and this House on the question of conflict of interest will move in that direction.

Another criticism I offer is that this statement and the Order in Council with its guidelines draw no lines among public servants. They are all in the same basket whether they are deputy ministers or assistant deputy ministers involved in the making of policy or whether they are cleaners or helpers. Public servants across the entire spectrum are covered by one set of guidelines and one Order in Council. I think this is unfair to these public servants. Certainly the public must be protected but, as the Prime Minister says, we have to think about our public servants as well. I think we should be able to draw a line so that the most severe restrictions apply to those who are involved in the decision-making process. That does not require a set of guidelines so broad that, in order not to be hard on cleaners, helpers and stenographers, it really imposes no restrictions at all on those at the top.

The next comment I wish to make is that this statement makes no reference whatsoever to the process of hopping back and forth which goes on on the part of public servants who go out into private industry and back again and so on. It seems to me that some solution must be found to that problem. I know my friends on both sides of the House like to come out with the cliché that we need to have these people in government so that they bring to government the experience of service in the private sector. But one cannot but be concerned about conflict of interest when a senior public servant at the deputy minister level or close to that goes out into private industry and later comes back. All right, we cannot deny the right of people to look for employment when they are out of one job, but surely provision can be made that the government will not deal with firms which have in their upper echelons those who within the last year or so were in the sacred precincts of the government itself. This problem has not been touched in this statement or in either of the other statements which were given to us.

There is also no reference in this statement, as there was no reference in the statements of July 17 or July 18, to what we regard as fundamental in this whole question. In our view it is not just a case of whether a person is able to make a buck or so because of his connections; what counts to the public is the philosophy, the viewpoint, of those making the decisions, whether they be at the government level or at the public service level. I think something must be done to bring that point of view to this whole discussion of the conflict of interest. Mr. Speaker, I am about to sit down.

Some hon. Members: Hear, hear!

Mr. Knowles (Winnipeg North Centre): That kind of remark can always be counted on to draw applause, but I think it is particularly to be noted that when I complained

about persons with a financial interest being in a spot to influence government policy, and then said I was about to sit down, the applause came from the Tories.

I want to associate myself with what the Leader of the Opposition said about this whole subject being considered in the Standing Committee on Privileges and Elections. I should like to go a little further, however. Instead of just saying it ought to be done, I would call upon the President of the Privy Council, when he presents his motion for the reference of the July 17 green paper to the standing committee, to amend that motion to include in it a reference to that committee of the statement made by the Prime Minister on July 17 regarding cabinet ministers and also the statement made and Order in Council tabled today. That committee should have the opportunity to go thoroughly into the whole subject before us today, the important question of conflict of interest and its relationship to public policy.

[Translation]

Mr. Réal Caouette (Témiscamingue): Mr. Speaker, we welcome the statement made by the Prime Minister (Mr. Trudeau) concerning the conflicts of interest as well as that on the publication of guidelines which will help protect Canadian public servants against any suspicion.

Mr. Speaker, public servants must be protected against any suspicion in carrying out their duties considering their importance. Hon. members and governments follow one another, but public servants remain. Some officials have been in the government service for 25 to 30 years irrespective of political parties. Those people are important and we must recognize it. They are not subjected to changes as we are whether we are Liberals, Progressive Conservatives, New Democrats or Social Crediters. This is why the civil service must continue to serve the country, hence the importance of its behaviour before the people of Canada.

Mr. Speaker, in the various departments where the public servants more or less rule the roost, I believe we should add another point to the eight set out by the Prime Minister, that is administrative control. For instance, because I received two rather important complaints, I am personally conducting an inquiry concerning some Central Mortgage and Housing Corporation employees who, I am told, receive bribes when they recommend the development of such and such a housing project, in two places in the province of Quebec. Mr. Speaker, when I have conclusive evidence, I shall name the persons involved on the floor of the House.

I want to draw the attention of the House to another point. The Prime Minister recommends the following, and I quote:

—that standards and procedures for employees of the House of Commons be referred to the Commissioners for Internal Economy and for employees of the Senate, to the Committee on Internal Economy, Budgets and Administration.

Mr. Speaker, it seems to me that we are asking too much from the Internal Economy Committee. It is already bogged down in its work. Here is striking proof of it. For three years now I have been asking for a press attaché. All the other parties have one already. The committee did not have time yet to give me one because it is overworked. Mr. Speaker, I think we should set up another committee in order to relieve the one dealing with internal economy so that I too may get justice from the federal public service.

APPENDIX "C"

P.C. 1973—4065
18 December, 1973

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Treasury Board, is pleased hereby to approve the issue of the annexed guidelines to be observed by public servants concerning conflict of interest situations.

Certified to be a true copy

R. G. Robertson

Clerk of the Privy Council

GUIDELINES TO BE OBSERVED BY PUBLIC
SERVANTS CONCERNING CONFLICT OF INTEREST
SITUATIONS

SHORT TITLE

1. These guidelines may be cited as the Public Servants Conflict of Interest Guidelines.

GUIDELINES

2. It is by no means sufficient for a person in a position of responsibility in the public service to act within the law. There is an obligation not simply to obey the law but to act in a manner so scrupulous that it will bear the closest public scrutiny. In order that honesty and impartiality may be beyond doubt, public servants should not place themselves in a position where they are under obligation to any person who might benefit from special consideration or favour on their part or seek in any way to gain special treatment from them. Equally, a public servant should not have a pecuniary interest that could conflict in any manner with the discharge of his official duties.

3. No conflict should exist or appear to exist between the private interests of public servants and their official duties. Upon appointment to office, public servants are expected to arrange their private affairs in a manner that will prevent conflicts of interest from arising.

4. Public servants should exercise care in the management of their private affairs so as not to benefit, or appear to benefit, from the use of information acquired during the course of their official duties, which information is not generally available to the public.

5. Public servants should not place themselves in a position where they could derive any direct or indirect benefit or interest from any government contracts over which they can influence decisions.

6. All public servants are expected to disclose to their superiors, in a manner to be notified, all business, commercial or financial interests where such interests might conceivably be construed as being in actual or potential conflict with their official duties.

7. Public servants should hold no outside office or employment that could place on them demands inconsistent with their official duties or call into question their capacity to perform those duties in an objective manner.

8. Public servants should not accord, in the performance of their official duties, preferential treatment to relatives or friends or to organizations in which they or their relatives or friends have an interest, financial or otherwise.

Published under authority of the Senate by the Queen's Printer for Canada

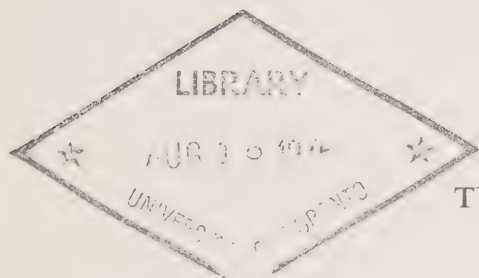
Available from Information Canada, Ottawa, Canada



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable CARL GOLDENBERG, *Chairman*



Issue No. 23

TUESDAY, JUNE 17, 1975

Complete Proceedings on Bill C-47, intituled:

“An Act to amend the Judges Act and certain other Acts for related purposes and in respect of the reconstitution of the Supreme Court of Newfoundland and Prince Edward Island”

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Quart
Hayden	Riel
Laird	Robichaud
	Walker—(20)

**Ex officio members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 11, 1975:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Laird, seconded by the Honourable Senator Carter, for the second reading of the Bill C-47, intituled: "An Act to amend the Judges Act and certain other Acts for related purposes and in respect of the reconstitution of the Supreme Courts of Newfoundland and Prince Edward Island".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Laird moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, June 17, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Laird, Langlois, McGrand, Neiman and Robichaud.(7)

Present but not of the Committee: The Honourable Senators Greene and Macdonald.

The Committee proceeded to examine Bill C-47 intituled: "An Act to amend the Judges Act and certain other Acts for related purposes and in respect of the reconstitution of the Supreme Courts of Newfoundland and Prince Edward Island".

The following witnesses were heard in explanation of the Bill:

On behalf of the Judges' Widows of Quebec:

Mrs. Stuart B. Ralston;

The Honourable Thérèse Casgrain.

Department of Justice:

Mr. Donald S. Thorson,
Deputy Minister of Justice,
and Deputy Attorney General.

On Motion of the Honourable Senator Laird, it was *Resolved* to Report the said Bill without amendment.

After discussion, the Committee *Agreed* that the Chairman should draw to the attention of the Minister of Justice the fact that, with regard to the pensions paid to Judges' widows, there are instances where the amount received by certain widows is so small that hardships are imposed on them. A request that special consideration be extended to such cases will be made to the Minister.

At 12:15 p.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Tuesday, June 17, 1975

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-47, intituled: "An Act to amend the Judges Act and certain other Acts for related purposes and in respect of the reconstitution of the Supreme Courts of Newfoundland and Prince Edward Island" has, in obedience to the order of reference of Wednesday, June 11, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

H. Carl Goldenberg,
Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, June 17, 1975

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-47, to amend the Judges Act and certain other acts for related purposes and in respect of the reconstitution of the Supreme Courts of Newfoundland and Prince Edward Island, met this day at 11 a.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, before proceeding to consideration of Bill C-47 there is one matter I should like to deal with. Following the reference to the Senate of the matter of conflict of interest, the committee met, as honourable senators are aware, last Tuesday, and on motion of Senator Laird it was resolved that the committee proceed first with a study of the guidelines and proposals contained in the Green Paper on Conflict of Interest, that interested parties be invited to submit briefs, and that witnesses be heard when the session resumes after the summer adjournment.

Senator Croll: Mr. Chairman, I do not want to speak to that matter today as we have a bill before us. However, when we next meet I do wish to speak to that resolution. I am opposed to it.

The Chairman: The resolution was passed by the committee, Senator Croll.

Senator Langlois: How can we come back on a resolution that has already been passed?

Senator Croll: The resolution was passed at an *in camera* meeting, and you are now reporting it to an open meeting. I have the right to speak to it.

The Chairman: Well, we will leave that to the next meeting of the committee when we revert to the Green Paper on Conflict of Interest.

Senator Croll: I do not leave the question of my right to speak to the resolution at the next meeting; I leave the matter of speaking to the resolution to the next meeting.

The Chairman: That is right.

Senator Greene: Before it becomes indelibly ingrained in our record, I might say that I do not recall the words "after the summer recess" being a part of the resolution. If Parliament sits late July—and I have a sort of seat-of-the-pants feeling that it might—surely, if we have time in late July and witnesses are available, it will not be contrary to Senator Laird's motion if we hear those witnesses.

The Chairman: I assure you, Senator Greene, that we are going to have to spend a few meetings on the proposals and guidelines, and we will not conclude consideration of those proposals before the summer recess, even if that does

occur at the end of July, which I think will not be the case. It will occur, at the latest, towards the middle of July.

We thought we should give witnesses time to prepare submissions. You cannot just call witnesses and say, "What do you think of the Green Paper on Conflict of Interest?"

Senator Croll: There was no intention to call witnesses and notify witnesses to prepare briefs. That is one of my objections. In any event, we should stand this matter for the time being.

The Chairman: I think that would be preferable, Senator Croll.

Honourable senators, we have before us this morning Bill C-47, to amend to Judges Act and certain other acts for related purposes and in respect of the reconstitution of the Supreme Courts of Newfoundland and Prince Edward Island. Appearing from the Department of Justice are Mr. Donald S. Thorson, Deputy Minister of Justice, Mr. Ratushny and Mr. Jordan, all of whom will be available to answer questions and make explanations in connection with the bill.

Before calling on the departmental officials, however, I should like to call on the Honourable Thérèse Casgrain and Mrs. Nadine Ralston, who are appearing on behalf of the Judges' Widows of Quebec. The brief prepared and signed by Mrs. Ralston has already been distributed to members of the committee.

Would you proceed, Mrs. Ralston?

Mrs. Stuart B. Ralston, on Behalf of Judges' Widows of Quebec: Mr. Chairman and honourable senators, on behalf of the widows of judges of the Superior Court of the Province of Quebec, I am asked to thank you for granting us this opportunity of appearing before you today. This would not have been necessary if the suggestion of the Prime Minister, that we appear before the Commons committee deliberating on amendments to the Judges Act, had been heeded. The chairman of that committee chose to call only one witness and that was the Minister of Justice.

We are fully aware that the Canadian Senate is not empowered to change a money bill, but you do have the right to recommend changes in money bills. This we ask the Senate to do in the case of Bill C-47 in the strongest possible terms. We know that if the Senate attempts to recommend amendments to bills the House of Commons immediately cries, "Abolish the Senate!" On the other hand, if you adopt passive acceptance you are then accused of being rubber stampers.

I particularly wish to draw to your attention, on page 2 of the submission to which the chairman referred earlier, two examples of pensions that are set out. A woman widowed in 1961 received an SRB (Supplementary Retirement Benefit) of \$907. Had she been widowed in 1959 she would

have received approximately 6 per cent more. This is where I find the judges administrators' formula reverses the whole idea that the government was trying to accomplish in 1972, when the SRB was brought into effect, which was to alleviate the distress of long-time widows. A widow of 1963 received an SRB of 6 per cent more than a widow of 1961, both SRBs being based on the same original pension.

There are only 205 judges' widows in all of Canada; 43 of them are widows of Quebec Superior Court judges. Their pensions range from low of \$2,357 to a high of \$8,613; 85 per cent are below the poverty line; six women have been widowed since 1972, which places them slightly above the poverty line.

Judges are to be paid \$50,000 per annum under Bill C-47, with a pension of two-thirds of their salary, which amounts to \$33,332 per annum, of which a widow would receive half, or \$16,666. This is a far cry for a judge's pension of 1950, which would be \$9,000. Under the present terms of Bill C-47 his widow would receive half of that, which is \$4,500. The point I am attempting to make here is that the smaller the pension the smaller the increase. There is too great a disparity. I am therefore sure you can understand why we cannot agree with clause 12 of Bill C-47.

The Honourable Thérèse Casgrain has kindly accompanied me here today, and we would more than welcome any questions you may wish to ask us.

Senator Croll: How many judges' widows are there affected outside of Quebec?

Mrs. Ralston: There are 205 altogether, as of the end of September, 1974.

[Translation]

Senator Goldenberg: Would you like to add something, Mrs. Casgrain, you are almost at home here.

The Honourable Therese Casgrain: I do not have much to add. I have been a widow for twenty-five years now—almost twenty-five years. Mrs. Ralston has given a quite specific picture of the present situation where the Act is implemented. When my husband died, his salary as a judge was of \$12,000. So, if I am entitled to half the pension he would have received, which would have been \$9,000, then I would have \$4,500.

So, I do not have much to add. I have become resigned. We have been trying for years to have this Act changed. Mrs. Ralston and I have tried recently. Three years ago, Mr. Justice Paul Gervais chaired a Committee of the House. Yes, then, I have also tried to have this Act amended in more equitable lines. What I would see—I understand the Act cannot be made retroactive, but it seems to be that all widows of judges should receive the same amount all over Canada, because otherwise, one has five cents more than the other, and that another has ten cents more. And that just doesn't make sense.

I have nothing I wish to add. I leave it up to your conscience. Everybody is with us. Everybody finds this situation terrible, but nobody acts. So, what is going to happen, I don't know. On the other hand, I am not very acknowledged in procedures, but it seems to me that if the Senate wanted to propose an amendment, the House of Commons could not possibly refuse it, because after all when we explain to people what is going on, they are just amazed. That is all I have to say.

[Text]

The Chairman: Would honourable senators allow me to ask the Deputy Minister of Justice if he has any comments or explanation of what the legislation proposes? I must say, I am not too clear about what the legislation proposes in this connection. Would you care to come forward, Mr. Thorson?

Mr. D. S. Thorson, Deputy Minister of Justice and Deputy Attorney General: Certainly, the substance and spirit of the representations made this morning have been made known to the Department of Justice, and most certainly to the Minister of Justice. It will be recalled, Mrs. Ralston, that the Prime Minister did reply to your letter to him some time ago. I suppose it would be advantageous to place on the record the critical paragraph of the Prime Minister's reply. In respect of the principle advocated—which as I understand it, is that the widows' pensions today should be based on the salaries currently being paid to judges of the court—the Prime Minister made this remark in his reply:

The Government must take into account that granting your request would open the door to similar claims by many other categories of pensioners whose pensions are directly related to their salaries at the time of retirement. This relationship evidently creates a disparity between the revenues of pensioners and wage-earners, and this is why the government has taken appropriate remedial action by granting supplementary pension benefits and indexing these benefits to the cost of living, as part of its continuing program to alleviate the impact of inflation on people with fixed incomes.

It might be helpful if I were to illustrate exactly what the bill does with respect to the pensions of widows of judges who retired from office and of widows of judges who died in office. The bill basically proposes to increase the widow's pension from two-ninths, which was the old formula, to three-ninths; that is to say, one-third of the salary of a judge who dies in office.

Senator Croll: The salary of a judge, as of today?

Mr. Thorson: No, whenever the judge died; that is to say, in the case of a judge who died in office, who therefore was not a pensioner, the formula now says the widow is entitled to an annuity equal to two-ninths of his salary at the time of his death.

The bill would increase that to one-third of his salary at the time of his death. In the case of a judge who had retired before his death, that is to say, in the case of a judge who was in receipt of a pension in his own right under this act at the time he died, the bill increases the formula for the widow's pension from one-third of the pension that the judge was getting at the time of his death to one-half of the pension that the judge was getting at the time of his death. But—and this is the important point—I think it is germane to the consideration here—that the bill is written in such a fashion that the increase in the basic underlying formula for the determination of the widow's pension, is deemed to have been granted at the time when the original pension was granted for purposes of calculating the SRB amount. This means that you then push the calculation right back to the date of the retirement or death of the judge. The effect of this is to recalculate and recompute entirely the amount of the supplementary retirement benefit. Consequently, not only is there an

increase in the formula for calculation of the basic pension but there is a consequent increase in the calculation of the supplementary retirement benefit.

Senator Croll: That is for the retiree, that is for the judge who retires, not who dies.

Mr. Thorson: The judge's widow, of course, gets the benefit of the supplementary retirement benefit, as does the judge himself during his lifetime after retirement.

Senator Croll: But there is a difference between the judge who retired and the judge who died in office. That is what I am trying to get at.

Mr. Thorson: Yes, but it works out in the same way in the final analysis.

Mr. Chairman, it might be helpful if I were to read some examples. We thought it would be useful to work them out. I personally have not done the arithmetic but I have no reason to doubt the accuracy of the arithmetic. With that very mild caveat, I could give one or two examples of what the change means in dollar terms.

I would prefer not to refer to the names of the widows in question as that might occasion some embarrassment, so let me just call them by letters "A", "B" and so on.

I have a number of examples but perhaps this first one will illustrate the working of the bill as well as any other.

In this case the pension of widow "A" came into pay in August 1961. The amount of the annuity then granted was \$3,755. Adding the supplementary retirement benefit and the factor that was used there, based on the 1961 pension, which is 56 per cent, the supplementary retirement benefit as of today is \$2,104, for a total of \$5,860.

Senator Robichaud: This supplementary benefit was introduced in 1972, is that correct?

Mr. Thorson: Then or shortly before, Senator Robichaud.

Senator Robichaud: From 1961 to 1972 she received a total of \$3,755.

Mr. Thorson: No. Let me try again. The original annuity there was \$3,755. When the supplementary Retirement Benefits Act was passed in 1970 or 1971 it contained a formula that took into account the year in which the original pension was granted, so that the older the pension the higher the index factor. So if you got close to a year when the annuity granted was the year before that act was passed, the supplementation actually would be a modest one. In the case of this particular pension, the supplementation as of 1975 is \$2,100. I am using round figures, as \$2,104 is the exact number. The result of this was that, taking the two numbers together, the present annuity is \$5,860. Under the bill, on the recalculated basis, moving from one-third of the husband's annuity to one-half of his annuity, the new basic annuity becomes \$5,633. Because of the way in which the law is written, to deem the new formula to go back to the original date of the grant, the new supplementary retirement benefit as of 1975 becomes \$3,154, with the result that the total annuity becomes \$8,787.

Senator Macdonald: is that what they get now, those older retired ones?

Mr. Thorson: Yes. I have deliberately selected an annuity originally granted in August 1961. Taking the two fig-

ures, the present total annuity of \$5,860 under the bill becomes \$8,787. The total increase is 49.96 per cent, reflecting approximately a 50 per cent increase in the total, by the addition of the two components of the amounts, taking into account the recalculation of the supplementary retirement benefit portion. I have other examples.

Senator Croll: I keep thinking here, Mr. Thorson, that you should live a very long time—because I do not know who else is going to explain this to us in the future.

The Chairman: Mr. Thorson said that he had other examples. Do you want him to cite the other examples? He says they are along the same lines.

Senator Croll: I would like another one.

Senator Macdonald: That is one where the judge retired?

Mr. Thorson: I now take one further back, and here is an annuity granted to widow "B", as I will call her, in February 1952. The original annuity granted as provided by law was \$3,200. The supplementary retirement benefit, using the indexing formula of 86.7 per cent, is now \$2,774 for a total annuity of \$5,974. Under the new legislation the recalculated basic annuity becomes \$4,800. The recalculated supplementary retirement benefit becomes \$4,161, with the result that under the new legislation the new total figure of annuity becomes \$8,961. It is exactly a 50 per cent increase in the total.

Senator Robichaud: But "B" receives roughly \$200 more than "A".

Mr. Thorson: No, sir.

Senator Croll: Yes. The point Senator Robichaud is making is that you start with something like \$5,633. Here you start with \$4,800. Yet in the end "B" ends up with more than "A".

Mr. Thorson: No, sir.

Senator Robichaud: Yes, he ends up with \$174 more than "A".

Mr. Thorson: The point to be made here, senator, is that that may be how it works out in this example, but that, however, is a function of the operation of the Supplementary Retirement Benefits Act. That act provides that in the case of any pension that became payable in the year 1952, or an earlier year, the indexed factor becomes 86.7 per cent. That is not something over which we have any control here. All I am saying is that no matter when the pension was granted, if it was granted prior to 1952, then the indexing factor is identical, namely, 86.7 per cent. As you come closer to the future, for example, in the case of a pension awarded in 1974, the index factor is 10.1 per cent.

Senator Neiman: Without giving the details of all these examples, could you say, Mr. Thorson, whether in fact the widows all end up with a pension roughly in this area or is there a great discrepancy in the total amount of pensions? We are talking here, under the bill, \$8,787 or \$8,961. What is the minimum-maximum that you foresee?

Mr. Thorson: I would say that most widows' pensions are higher than the figures given here, simply as a function of time. Most widows' pensions are now being paid in respect of judges who retired in the 1960s rather than in the 1950s. Mrs. Ralston will correct me if I am wrong, but

in relation to the earlier pensions, when judges' salaries were significantly lower than they are now or indeed as they were in the 1960s, the figures are naturally much smaller because they had to be calculated as the law stood on the basis of the judge's salary at the time either of his retirement or of his death.

The example I gave of the 1952 annuity for the widow started with an annuity of \$3,200, which was the basic annuity. Under the new bill you go from \$3,200, which was the original annuity, to \$8,961. In making that statement, however, I am not suggesting that there are not a number of examples of even smaller annuities. I know that there are.

Senator Neiman: What is the minimum?

Mr. Thorson: I am not sure I have the smallest pension. Some of them go back a long way and the amounts are small indeed.

Senator Neiman: How can people live on them? That is the point. How much lower are you talking about? Are they \$2,000 or \$3,000 or \$4,000 lower than that?

Mr. Thorson: I cannot put my finger on the very smallest annuity.

Senator Neiman: You should know.

Mr. Thorson: Some were granted under statutes that have disappeared in the meantime. Mr. Jordon tells me, however, that the lowest pension that we know of, taking into account the SRB element as of today and not based on the new calculation, is about \$2,900. I am sorry I do not have the figures to indicate what the new numbers would be, based on a recalculation. However, these are isolated instances. They are examples of pensions which go back a long, long way. The point I would make here is that they obviously do not take into account the old age pension, which would be a supplementation of that.

Hon. Mrs. Casgrain: Mr. Thorson, you mentioned the 1952 pension. My husband died in 1950 and the pension that we got at that time was \$2,666. What would be the result of this law today?

Mr. Thorson: Madam Casgrain, I have not attempted to do that particular example. We would be happy to do a calculation for you to show it. I have not come prepared to do so now, however.

Senator Croll: There is a 1950 example on page 2 of this list. Perhaps you have not seen the list. Would you like to glance at it? Mrs. Ralston can show it to you.

Mr. Thorson: I am not sure it would help, senator, since I do not have examples of every single instance. I am sorry but this particular listing was not made available to me. We just selected certain examples at random.

I think it would be useful to the committee if I were once again to review basically what the pattern is under the new regime using a 1952 example. If we do that, we will at least be able to get some sort of order of magnitude of the increase without, doing an actual dollar computation. We will, of course, be doing the recalculations, but again taking the February 1952 pension, which is the earliest one in my list, the original \$3,200 ends up under the new bill at \$8,960. If you take the figures and apply pro rata adjustments to them you will get some idea of how it works out under the new bill. By that I mean applying the same kind of ratios in a rough fashion.

Senator Laird: Mr. Chairman, before asking any questions, perhaps I could be permitted to inform Madam Casgrain and Mrs. Ralston that had the Senate wished it could have disposed of this bill without sending it to committee. They may already know that from having read *Hansard*. However, we felt that they should have an opportunity under the proper auspices, namely, where it is becoming a matter of record in these Minutes, to state their case.

It might help at this point, Mr. Chairman, if I were to ask Mrs. Ralston this question: Having heard Mr. Thorson's observations, is your point of view on the matter changed at all?

Mrs. Ralston: Not one iota.

Senator Laird: May I ask you why?

Mrs. Ralston: Mr. Chairman, let us have no compunction about it. I am "exhibit A," my husband having died in 1961, so I really can speak about this. Similarly, Senator Casgrain can speak about 1950. The first point I should like to make is that Mr. Thorson has spoken about an SRB of \$2,104. It is \$907. I have been puzzling about that since you mentioned this figure, because this is what they got and I questioned it at the time. You see, here is another one.

Mr. Thorson: Mrs. Ralston, the law provides that the indexing factor in case of a pension awarded in 1961 is 56 per cent.

Mrs. Ralston: Well, look at this. This is still going on.

Mr. Thorson: I am sorry, Mrs. Ralston. You are using 1972 figures, not 1975 figures.

Mrs. Ralston: And you are using what figures?

Mr. Thorson: Nineteen seventy-five figures.

Mrs. Ralston: Well, you are combining supplementary pension benefits with the cost of living.

Mr. Thorson: That is what it is. That is the law by which an attempt is made to keep the value of annuities hitherto granted, current with the cost of living index.

Senator Croll: It has almost doubled from 1972.

Mr. Thorson: Yes.

Senator Croll: Does it have that same impact at that earlier time?

Mr. Thorson: Oh, yes. And of course, with the new base, whereby you go back and recalculate the original annuity, and then apply the percentage all over again, you get not only an increase in basic pension, but also a significant increase in the amount of the supplementary retirement benefit, yielding a substantial improvement; as I say, in total a 50 per cent improvement in the pensions in the examples I have given. As a matter of fact, Mr. Chairman, in each of the four examples that I have before me the figures work out to almost exactly a 50 per cent increase in the total.

Senator Laird: Well, Mrs. Ralston, having now had that additional, supplementary information, does that help your point of view?

Mrs. Ralston: There are a few other questions I would certainly like to ask. I would like to know what impact this will have on women widowed in 1972, taking it that their

husbands died as pensioners, rather than dying on the bench.

Mr. Thorson: I do not have an example, but I do have the index table. In the case of a widow of a judge who died in 1972, the index factor, that is to say, the amount by which the basic annuity is increased, apart altogether from this law, is 22.8 per cent; and of course, that same number will be applied and recomputed against the increased pension provided for by the bill.

Mrs. Ralston: In other words, it would bring that up to a pension of roughly \$10,110.

Mr. Thorson: Well, that again would depend on the court of which the husband was a judge. It would depend on whether he was a chief justice, or a judge of the Superior Court of Quebec, or—

Mrs. Ralston: I am talking about a Supreme Court Puisne judge.

Mr. Thorson: A 1972 salary of—?

Mrs. Ralston: Well, the original pension granted was \$8,844, and I do not know what the cost of living bonuses have been.

Mr. Thorson: That number would, of course, increase.

Mrs. Ralston: Yes. So this means that more recent widows are going to come off a great deal better, and furthermore, these women have an advantage over the older widows, in that they also have Canada Pension.

Senator Croll: They may or may not have the Canada Pension. Unless they were working there would be no Canada Pension.

Mrs. Ralston: No, but the ones who went on pension in 1972 did have the Canada Pension. Then again, I can go back, and I can stress, as I did to Mr. Lang, the Prime Minister, Mr. Drury and various other people that I have made submissions to, the fact that as a woman grows older her needs become greater. We have one case of a widow in Quebec City who is 94 and living in a miserable nursing home. She has no other income. Many of the Quebec judges did not have the sort of practices that are associated with Montreal lawyers and judges today. They did not have very lucrative practices. Many of them have told me that they were paid off in eggs, and chickens, and things of that sort. The result is that they have no private means.

I went to see one widow a few years ago, who had had a perfectly comfortable and lovely home. She was living over in St. Lambert, on the fourth floor of a walk-up, suffering from arthritis and heart trouble. She could get out once a month. It took her two hours to get back upstairs. She has since moved to the far reaches of Laval, where she was able to get a ground floor apartment for the same low rent.

These are widows of the men you expect to dispense justice, and the ones who are on the bench today are looking at us and wondering what their situation is going to be in ten or 20 years.

Mr. Thorson has been very kind in giving us these examples, but I still come back to the point that these pensions, at the best, are one-half of what the pensions will be for widows once this bill goes through; that is of widows to be created, shall we say, unfortunately.

The Chairman: Senator Laird? You were asking questions. Have you any further questions?

Senator Laird: Well, actually, perhaps it is only an observation. I see that you do, in your letter, recognize, and of course you are aware, that we cannot do anything here, such as amending this bill, and that the most we can do is to recommend that a reconsideration of the position put forward by you be made. Speaking purely personally, I would be willing to move that the chairman, in a formal letter to the Minister of Justice, ask for reconsideration of these cases.

Senator Croll: Mr. Thorson, is the statement made by Mrs. Ralston correct that their pensions will be one-half of the pensions that present pensioners will get?

Mr. Thorson: I am sure there would be cases where that would be completely accurate, Senator Croll, simply by virtue of the fact of the difference in judicial salaries now as compared to many years ago. This, however, is a situation by no means unique to judges. It is equally true of the widows and dependents of retired civil servants who may have retired many years ago, too. They are in the same predicament.

Senator Croll: Yes; but in drawing up that formula, you have become very familiar with it. It was strictly a catch-up formula, was it not, for everybody? Civil servants and all the others?

Mr. Thorson: You mean the supplementary retirement benefits Act?

Senator Croll: Yes. Does that catch-up formula hold out the possibility of really moving forward with regard to the new pensions, and really jumping ahead in terms of the percentage you quoted?

Mr. Thorson: No, sir. It was designed, really, to achieve one objective, and that is to maintain the purchasing power, from 1972 onwards, of annuities being paid under a whole variety of statutes, including the Judges Act, including the act applicable to members of Parliament, the Retiring Allowances Act, the Superannuation Act applicable to public servants, and a wide group of persons whose superannuation and annuities are paid out of public revenues. It was designed to keep the purchasing power of those annuities constant in terms of increases in the cost of living. What it did was to go back, in fact, in point of time, and say that in the case of an annuity granted years ago, an index must be applied to it, recognizing that such annuities have slipped away behind in terms of their purchasing power. So, as I say, the formula adopted was one whereby a pension granted in 1952 or earlier would have an indexing factor of 86.7 per cent in today's terms.

Senator Greene: Mrs. Ralston, by reason of the unique organization of the courts in the province of Quebec, your organization represents the widows of superior court judges in the province of Quebec. Do you purport to speak for widows of judges in courts in other parts of the country, for instance in the common law provinces? I would think that any argument you make vis-à-vis the superior court judges would be even more relevant in the case of county court judges' widows. Can your organization help us about that?

Mrs. Ralston: We have not contacted judges' widows outside of the province of Quebec, but we have been in almost constant communication with the chief judges of the various courts, and they have kept us aware of their feelings in the matter and of their judges' feelings. They deplore the situation. They say that in many, many cases

the situation is pretty dire. But, you see, so far as Quebec is concerned, and whether it is a case that they like to go to court, or not, I do not know, but there are far more judges in Quebec than there are in Ontario and this in turn puts the bulk of the widows in Quebec.

Senator Croll: But there are 200 across Canada as against 88 in Quebec.

Mrs. Ralston: No, we are 44 in Quebec.

Senator Croll: Surely we could not do something for one judge's widow and not for the others?

Mrs. Ralston: No, no, we are not expecting that. We would expect that anything that was done for the widow of a Quebec judge would be done right across the board. But we seem to be the ones who have had it drawn to our attention. I must say that a great number of these widows are rather shy and retiring, and some of them are not very well. They are, perhaps, not as outspoken as Senator Casgrain and I are. But we have been more or less, shall we say, pushed into the position of trying to do something for these women.

Senator Croll: I hear from time to time from some of the Toronto widows and I try to do what is possible for them.

Senator Greene: So your plea would include the plight of the county court judges' widows?

Mrs. Ralston: I really have no knowledge of the county court judges' pension scheme at all, but I imagine it is in as a deplorable state as the pension scheme for superior or federal court judges. I am speaking of that level right across the country because it goes by different names in different provinces.

Senator Greene: I should like to ask a question of Mr. Thorson in respect of the Prime Minister's justifiable fear that this would open up a whole keg of nails. We went through this a few years ago on veterans' pensions, and one of my few and perhaps insignificant victories was the fact that I was able to prevail on the argument that veterans' pensions were contractual and did not involve a handout from the government. It was a contract under which the veteran who had given up so many years of his life was discharged from the Canadian Armed Forces after World Wars I and II, and therefore he was not in the same position as the blind pensioner or the unemployable pensioner who was, in effect, receiving some new benefit. But the Canadian Government had a contract with the dependants that they would be maintained at a level commensurate with what the pension had been at the time of discharge, and I think veterans' pensions were increased on that basis, and at a higher percentage, certainly, than the blind pensioner or the old-age pensioner or anyone else. That was simply because of the contractual relationship. Can we make a similar argument vis-à-vis the judges—that is to say, that their pensions are always implemented in the Judges Act and as part of it? Perhaps one of the reasons a judge gave up more lucrative returns in the private world was because he, and his widow later, would have this right to a pension based on the dollar value at the time he took the job. So perhaps there is a contractual relationship which does not exist in other circumstances.

Mr. Thorson: Perhaps I should correct the record formally, senator, and in the legal sense. The Judges Act is one of the few remaining statutes where the pensions are by virtue of a grant of an annuity by the Governor in

Council. They are not as of right as is the case under other statutes. Here I have in mind as an example the statute that governs annuities payable to retired civil servants. As a legal matter the granting of the annuity to judges and widowed spouses is discretionary in terms of law. But I would agree with you in the broader sense and certainly in the moral sense that a judge who enters on a career as a member of the judiciary does so in the expectation that the law reflects the kind of protection that would be available to him and to his widow and children at the time of his retirement or at the time of his death. So it is contractual in that sense. This law, of course, does not alter that contract adversely so far as the judge or his widow is concerned. In fact it is the reverse of that because it is proposing that Parliament approve a unilateral altering of the contract in favour of the widow and the surviving children.

Senator Greene: But not to the degree that the value of a \$4,000 pension in 1951 would be matched in terms of the dollar's value today.

Mr. Thorson: I am not commenting on the relativity as between veterans' pensions; I am merely making the point that the judge of yesteryear when he accepted the judicial appointment accepted it on the basis of the then salary and the then pension provisions of the Judges Act. That, in a sense, if not a legal sense, is the contract, and what we are doing here is to improve it unilaterally.

Hon. Mrs. Casgrain: But what about the 1950 widows?

Mr. Thorson: The index figure is again, as I indicated a moment ago, in the case of any annuity granted either in 1952 or earlier, 86.7 per cent.

Hon. Mrs. Casgrain: Well, I am not too good at mathematics.

Senator Croll: Well, I can tell you that that is not bad.

Hon. Mrs. Casgrain: Anyway I feel sorry because even if it is the law, I think they could do something about it. Everybody says that it is all through and that widows should not be treated in that way whether county court widows or others. In Quebec I was told that we treat our judges' widows much better than they do in Ottawa.

That was a remark made on the side, because the widow's pension is adjusted as the salaries are increased.

The Chairman: We have discussed this and should return to the bill before us. As I said earlier, Mr. Thorson, Mr. Jordan and Mr. Ratushny are present. I do not intend to ask them to explain the bill, as it was fully explained by Senator Laird when he presented it to the Senate. It was also discussed by Senator Walker and Senator Asselin. Are there questions which honourable senators wish to put to the officials of the Department of Justice?

Senator Croll: I have one question, but not in connection with what your husbands would have received had they been here now. However, agreeing with the theory that chief justices, no matter where they are, should be paid a like sum, where is the rationale for a judge sitting in a very busy court in British Columbia and one who has very little to do in another area being paid the same salaries?

Mr. Thorson: Senator Croll, I think the answer to that is that it does not work out in fact quite in that manner. If one compares, for example, a small county court such as that in New Brunswick with a very large county court

system such as that in the Ontario, it is apparent that there are a great many more judges. Therefore, in the very nature of things, as basically the membership of the court is determined by the work load upon it, if the system works properly, which by and large, I am satisfied it does, there should be a reasonably even distribution of work load as between the various judges in the courts. This will not invariably be the case, of course, but it should work out in that fashion over the long-run if the organization of the courts, which is very largely in provincial hands, is sound.

Senator Croll: In other years Ontario was a bad example, those judges in the cities being very, very busy and those in the counties not so busy. It has now gradually been arranged so that they are brought into the cities and there is a more even distribution of the work load.

Mr. Thorson: That is correct.

Senator Croll: I like the idea of the same amount of family allowance, taxation and so forth. I am just waiting for the time when social welfare will be handed out on the same basis in every area of the country. That has been my argument for many years, but I have not yet succeeded. However, it is building up and I am very glad.

Senator Greene: Having gone through the last increase, there was some thought of uniform return, and Ontario in particular was the offender, as they pay county court judges a stipend from that rich province, which results in differentials in other provinces. This legislation attempts to obviate that situation. Surely there is nothing to prevent Ontario continuing paying county court judges sitting in surrogate court, for instance, \$8,000?

Mr. Thorson: Yes, there is, senator. There is a specific prohibition in the law directed to the judges directing them against accepting additional remuneration, except as authorized by section 22.

Senator Greene: What do you say if a judge in Ontario wishes to continue doing that?

Mr. Thorson: The province may very well choose to offer to make payment to the judge. That is something which we cannot control, but we can direct the judge not to accept it.

Senator Greene: It would be grounds for impeachment, I suppose?

Mr. Thorson: Perhaps, but I am not certain as to that.

Senator Greene: But there is no diminution of the federal salary?

Mr. Thorson: No, there is not; it is formally in terms of a prohibition directed to the judge.

Senator Laird: Mr. Chairman, I am prepared to move that this bill be reported without amendment, provided that I be permitted to make a second motion suggesting that you write a formal letter on behalf of the committee.

Senator Croll: I do not think that is a motion. Leave the motion and then it is informally agreed that the letter will be written. I think that will suffice, so long as it is done.

Senator Laird: I agree to that.

The Chairman: Is Senator Laird's motion adopted?

Hon. Senators: Agreed.

The Chairman: I shall, then, report the bill without amendment.

Senator Langlois: It is then understood, Mr. Chairman, that you will write a letter?

The Chairman: Yes, I shall write a letter to the Minister of Justice, conveying our interest.

Senator Croll: It should be done in some detail. Mr. Thorson has been very helpful today. You should pick out a couple of examples. They are real and should be put in some detail so that when the minister receives the letter he will be struck by the lack of uniformity and the real difficulties. Rather than words, give it to him in figures.

Senator Neiman: Mr. Chairman, is there any virtue in making some comment in the Senate with respect to this when the bill is reported on third reading?

Senator Laird: I would prefer, as the sponsor of the bill, not to complicate it. That is one reason; if we do that it will prolong the process and, believe me, we will then have all the judges mad at us.

Mrs. Ralston: They are mad at me now.

Hon. Mrs. Casgrain: They are also made at me.

Senator Croll: Is the bill with respect to the spouses going to come from the other place this week?

Senator Laird: I do not know.

Senator Croll: The bill with respect to the spouses will be received and it makes it wide open for discussion and observations. I guarantee that when I rise to discuss it I will make some observations and others will also.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: During our meeting last week we learned that next Tuesday will be Saint-Jean-Baptiste Day and the following Tuesday Dominion Day.

Senator Laird: Canada Day, Mr. Chairman.

The Chairman: That is correct; Canada Day. Therefore, shall we adjourn at the call of the Chair, or to the third Tuesday, if Parliament is still in session? What do honourable senators prefer?

Senator Langlois: To adjourn at the call of the chair.

Senator Laird: Yes.

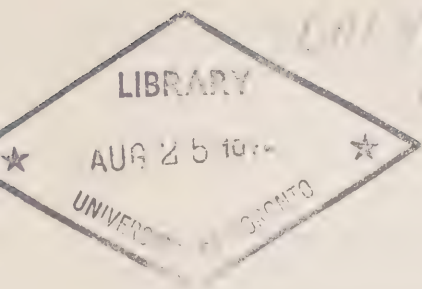
The Chairman: I suggested that we might sit on some other day, but the senators did not agree.

Senator Croll: You must be careful, because the days come very infrequently now when we can find the time.

The Chairman: Then it will be at the call of the Chair. Thank you very much, Senator Casgrain, Mrs. Ralston and Mr. Thorson for appearing.

Mrs. Ralston: Thank you very much for your hearing, Mr. Chairman.

The committee adjourned.



Univ. of Toronto Lib.
Public Library

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable KEITH LAIRD, *Deputy Chairman*

Issue No. 24

TUESDAY, JULY 22, 1975

Complete Proceedings on Bill C-1001 intituled:

**“An Act to provide an exception from the general law
relating to marriage in the case of Richard Fritz
and Marianne Strass”**

REPORT OF THE COMMITTEE

(Witness and Appendices: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Langlois
Buckwold	McGrand
Choquette	McIlraith
Croll	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker-(20)
Lang	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, July 21, 1975:

A Message was brought from the House of Commons by their Clerk with a Bill C-1001, intituled: "An Act to provide an exception from the general law relating to marriage in the case of Richard Fritz and Marianne Strass", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Hayden, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

With leave of the Senate,

The Honourable Senator Denis, P.C., seconded by the Honourable Senator Fournier (*de Lanaudière*):

That Rule 95, whereby a private bill originating in the House of Commons shall not be considered by a committee until twenty-four hours from the date of referral, be suspended with respect to the Bill C-1001, intituled: "An Act to provide an exception from the general law relating to marriage in the case of Richard Fritz and Marianne Strass".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

July 22, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators Laird (*Deputy Chairman*), Flynn, McGrand, McIlraith and Neiman.

Present but not of the Committee: The Honourable Senator Denis.

In attendance: Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel.

The Committee proceeded to the examination of Bill C-1001, intituled: "An Act to provide an exception from the general law relating to marriage in the case of Richard Fritz and Marianne Strass".

Mr. G. Faggiolo, Project Officer, Research Branch, Library of Parliament, was heard in explanation of the Bill.

On Motion of the Honourable Senator Flynn, it was Resolved to print in this day's Proceedings the "Dispensation" granted by the Sacred Congregation in Rome; the Latin text and an English translation prepared by the Department of Classical Studies, Faculty of Arts, University of Ottawa, are printed as Appendix "A".

It was also Resolved to print a Statement made by Dr. Paige Berman, M.B., B.Ch., of the Department of Medical Genetics, Montreal Children's Hospital to Mr. John J. Campbell, M.P. The letter is printed as Appendix "B".

On Motion of the Honourable Senator McIlraith, it was Resolved to report the said Bill without amendment.

At 10:25 a.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Tuesday, July 22, 1975

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-1001, intituled: "An Act to provide an exception from the general law relating to marriage in the case of Richard Fritz and Marianne Strass", has, in obedience to the order of reference of Monday, July 21, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Keith Laird,
Deputy Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, July 22, 1975

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-1001, to provide an exception from the general law relating to marriage in the case of Richard Fritz and Marianne Strass, met this day at 10 a.m. to give consideration to the bill.

Senator Keith Laird (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, this morning we have for consideration Bill C-1001, to provide an exception from the general law relating to marriage in the case of Richard Fritz and Marianne Strass. I should point out that Mr. Fritz and Miss Strass are present.

The bill was so excellently explained by Senator Denis on second reading that I presume everyone here has knowledge of the facts and is aware that the preamble in the bill does correctly set out those facts.

Perhaps I can expedite consideration of the bill by bringing to the fore certain questions which arose in my mind, and in Senator Neiman's and perhaps others'. There arose in our minds, as lawyers, the question of jurisdiction—in other words, does the Parliament of Canada have exclusive jurisdiction to deal with this problem of prohibited degrees in respect of marriage?

With the help of Mr. du Plessis, our Acting Assistant Law Clerk, and Mr. Faggiolo, of the Research Branch of the Parliamentary Library, I satisfied myself 100 per cent that the Parliament of Canada does have jurisdiction. In case any questions arise about that, we do have available not only Mr. du Plessis but also Mr. Peter Wershof, who is with the Department of Justice and who did work on this bill.

Perhaps you will find it helpful if I refer you to the one and only legal authority on the point. This was a court case and it set out the situation quite succinctly. You will be glad to know that it was a decision of Mr. Justice Wishart Spence, who at that time was a justice of the Supreme Court of Ontario. He is now, of course, a member of the Supreme Court of Canada. To give you the citation, the case is *Re Schepull and Bekeschus and The Provincial Secretary*, (1954) 1 Ontario Reports, 67. I shall just read one short paragraph which gives the key to the whole question. It is found at page 71 of the report, and I am quoting from the judgment of Mr. Justice Spence:

Under s. 91, head 26, of The British North America Act legislative authority is given to the Parliament of Canada upon the subject of "Marriage and Divorce" and by s. 92, head 12, of the same statute, legislative authority is given to the Legislature of the Province upon the subject "The Solemnization of Marriage in the Province". It is agreed by counsel for both applicants and the respondent that therefore the legislative power in reference to prohibited degrees of affinity is

in the Parliament of Canada and not the Legislature of Ontario . . .

In that connection, I noticed with interest that Mr. John Campbell, who is with us today and who sponsored the bill in the House of Commons, had obviously had some concern with the same point and dealt with it in committee. I mention this in the hope that it may help some of you on the problem of jurisdiction. If there are any questions, we do have the people here to answer them, as I have said.

Of course, that is only one branch of the whole question, and I presume the other is the interesting angle raised by Senator Denis about the course of true love and that sort of thing.

With those preliminary remarks, if anyone has any doubts on jurisdiction, I suggest that now is the time to ask questions.

Senator Neiman: Mr. Chairman, I am quite satisfied that the Parliament of Canada has proper jurisdiction. We have gone into that in some detail. I have just been reading through the committee proceedings of the other house. A point was raised by Mr. Abbott which I should like to touch on briefly. It had to do with the uncle-niece relationship being within the prohibited degrees of consanguinity according to our common law pretty well across Canada. It appears that this has been legislated in the provinces at some point, or it is in canon law or church law in various places.

Apparently medical evidence has been given that there should be no prohibition in this particular case, but the question is raised that we are dealing with a degree of consanguinity which is generally prohibited by common law, and the consequent question is whether the Government of Canada should indeed be looking at the whole question of degrees of consanguinity, which are perhaps far out of date and not in accord with present medical knowledge.

The Deputy Chairman: Speaking for myself, I agree that the whole question should be examined. In this particular instance I suppose it does have one peculiar characteristic which would make a private bill a not unreasonable request, and that appears, of course, from the table which I asked Mr. du Plessis to have prepared and distributed to you. It shows the family relationship: with dotted lines it indicates the illegitimate relationship; and with solid lines the legitimate relationship.

From that standpoint, perhaps we can agree that it is desirable, even if the whole question is to be examined, that in this particular instance, because of the peculiar circumstances, the private bill is warranted.

Senator Neiman: Right; I would agree that it is perfectly warranted in the circumstances.

Senator Flynn: What kind of evidence was given to show that there was no real problem of consanguinity in this particular case?

The Deputy Chairman: You mean, from the genetic standpoint?

Senator Flynn: Yes.

The Deputy Chairman: There was a letter produced in the House of Commons. I have it here, and I know that Senator Denis has a copy as well.

Senator Flynn: I was wondering whether the evidence would show that, generally speaking, the rule would not stand any more, because this prohibition is not really based on religious convictions; it is based on the problem of consanguinity.

Senator Denis: Yes, and the consequences after marriage, of course. So far as religion is concerned, the couple in question have a dispensation from the religious authority.

Senator Flynn: You say they have a dispensation?

Senator Denis: Yes, because in many provinces this kind of marriage is prohibited, as Senator Neiman has said.

Senator Flynn: But in the province of Quebec, if they have a dispensation, that is recognized under the Civil Code; the dispensation given by the church is recognized from a civil standpoint.

Senator Denis: Yes, normally, but it has not been recognized in this instance, senator, because Quebec refused to give them permission to marry.

Senator Flynn: When you say "Quebec," what do you mean?

Senator Denis: The Civil Code.

Senator Flynn: It all depends. There are some prohibitions in the Civil Code which can be cured by a dispensation, and the dispensations granted by the church, if my memory serves me right, up until this time, were recognized by the Civil Code, or were acceptable under it. I wanted to be sure that you could not proceed without this bill because, after all, I do not like the idea of making an exception to a rule which applies not only in Quebec but practically everywhere. Perhaps it is antiquated, and should be dropped, but it still exists.

The Deputy Chairman: Senator Flynn, before you came in I did refer to a case decided by Mr. Justice Spence. You probably will not have it in front of you. I gave the citation and read out one paragraph in which Mr. Justice Spence found that the Parliament of Canada had exclusive jurisdiction.

Senator Flynn: I have no doubt about that: I am not raising that point; that is clear. The British North America Act granted competence in marriage to the federal Parliament. It said, however, that all the laws applicable at that time in each province would continue until they were amended or repealed by Parliament. In Quebec, therefore, the laws as they are were those in force in 1867, and they have not been amended, except possibly with regard to divorce. If, therefore, under the Civil Code a dispensation could be granted to this couple from the prohibition against marriage between uncle and niece, that should

have been the normal way to do it. They did not have to come to Parliament and ask for a law of exception.

The Deputy Chairman: I see what you are driving at. You are saying, really, that they did not need to ask for this private bill.

Senator Flynn: That is right.

The Deputy Chairman: I cannot, of course, speak authoritatively with regard to all the background and research in connection with this matter, but somebody along the line came to the conclusion that they had to be on the safe side. Have you any knowledge of that, Mr. du Plessis or Mr. Wershof? Mr. Wershof, from the Department of Justice, worked on this for a while.

Senator Flynn: To my knowledge, a prohibition against marriage between a man and his widow's sister could be dispensed with, and, in fact, I have known of several cases along that line—for instance, between first cousins. A dispensation could be granted by the church, and where applicable in the civil law. I do not know for certain, but it may be that no dispensation can be obtained from the prohibition against marriage between an uncle and a niece. That is the point I would like to be put on the record.

The Deputy Chairman: Yes. Well, I think it should be, because the point you have raised is a very interesting one. It was considered advisable, apparently, to arrange for this bill, but it would be interesting to know whether it would have been possible to get along without it. It does appear, however, that that is not the case.

Senator Denis: May I clarify the situation?

I have here the Civil Code. Article 126 specifically prohibits marriage between an uncle and a niece.

Senator Flynn: Let me see, please.

Senator Denis: It is article 126 in the chapter concerning marriage. There are all kinds of formalities that have to be complied with, depending on whether the marriage may be solemnized in the presence of a qualified minister, or a priest, and so on.

Senator Flynn: The point that I wanted to raise is that dealt with in the second paragraph of article 127. It follows the rules concerning the prohibitions that you have just mentioned. It says:

The right, likewise, of granting dispensations from such impediments appertains, as heretofore, to those who have hitherto enjoyed it.

The church in Quebec has granted dispensation in these cases. At least, I know of the case I have just mentioned, of marriage to a sister-in-law, and between first cousins. I am wondering why it could not be applied to the case of an uncle and a niece. That is my point, and that is the only point I wanted to bring up.

The Deputy Chairman: I see what you are driving at.

Senator Denis: As a matter of fact, they tried to get a permit from Quebec.

Senator Flynn: From the church?

Senator Denis: From the government, and from the church as well.

Senator Flynn: The church is the one granting the dispensations, and I would like to know if they have been refused one in this case.

The Deputy Chairman: Apparently not. In your introduction of the bill, Senator Denis, I understood you to make it plain that not only was the dispensation given by the church, but also by the medical doctor.

Senator Denis: Yes.

The Deputy Chairman: But, you see, what Senator Flynn is arguing is that under the Code automatically a church dispensation carries with it a legal right. That is the point to which he wants an answer. Not being a Quebec lawyer, I cannot give such an answer.

Senator Denis: The Province of Quebec would not allow this. The couple asked Quebec; Quebec would not allow the marriage. The priest is ready to solemnize the marriage providing Quebec gives permission, but they have not given it.

Senator Flynn: Have we a witness here? I would rather have someone who is able to testify on these facts.

The Deputy Chairman: We have, Senator Flynn, fortunately, the gentleman I mentioned, to whom I turned originally when I had doubts about jurisdiction. This gentleman's name is Mr. Faggiolo. He is here, and I suggest that we get him to answer that point.

You have heard the discussion, Mr. Faggiolo?

Mr. G. Faggiolo, Project Officer, Research Branch, Library of Parliament: Yes. It seems to me that the answer lies within the first paragraph of article 127, which must be read in conjunction with the second paragraph. Article 127, in the first paragraph, reads as follows:

The other impediments recognized according to the different religious persuasions, as resulting from relationship of affinity or from other causes, remain subject to the rules hitherto followed in the different churches and religious communities.

The second paragraph reads:

The right, likewise, of granting dispensations from such impediments appertains, as heretofore, to those who have hitherto enjoyed it.

In other words, article 127 applies to other impediments, but not to those mentioned in articles 125 and 126 of the Civil Code.

Senator Flynn: Well, this is not as I understand it, because dispensations have been granted by the church up to now. If you say that the second paragraph of article 127 applies only to the other impediments, it seems to me that something has been going wrong for years and years. You see, dispensations have certainly been applied to certain cases referred to in article 125.

Senator Denis: For brother and sister-in-law.

Senator Flynn: Yes. And so it seems to me that the dispensation could have been granted here. It is granted by the church. The problem would have been if this couple had gone for a civil marriage. Possibly then the state could have said, "Well, we have never had the right to give a dispensation, so we are not going to give it." That possibly would be a case justifying a special bill, but I am not too sure.

Senator Denis: May I say here that all kinds of dispensations are possible, but there is specifically no dispensation as far as articles 125 and 126 are concerned. It is specifically written in the law that this is prohibited.

Senator Flynn: Yes. It refers to the degrees.

Senator Denis: The degrees. There are two degrees that they specifically prohibit.

Senator Flynn: No—three: cousins are included too. There is a dispensation with regard to marriage between cousins, and I do not see why there should not be a dispensation in the present case. Was the fact put on record in the other place that they had obtained a dispensation from the church? Did I understand that?

Senator Denis: Yes. I have here a photostat of the dispensation.

Senator Flynn: It was given by whom?

Senator Denis: By Rome.

Senator Flynn: By Rome. Well, where else could you go?

The Deputy Chairman: Are you satisfied with that?

Senator Flynn: I am satisfied, but it seems to convince me even further that it was not necessary to introduce this bill.

The Deputy Chairman: I suppose what you are afraid of is that it might set a precedent.

Senator Flynn: I would rather have amended the whole rule everywhere in Canada.

The Deputy Chairman: Well, Mr. Faggiolo has a point that may be helpful to us on that.

Mr. Faggiolo: My interpretation, and most of the authors agree with it, is that articles 125 and 126 create an absolute prohibition, and the only level of government which can amend this prohibition is the federal government. Article 126 deals with other prohibitions—that is to say, prohibitions that do not relate to marriage between uncles and nieces, brother and sister, parents and offspring, and as such the church cannot grant the dispensation which would give legality to a marriage prohibited under articles 125 and 126. However, if there is another prohibition, let us say a prohibition against marriage between first cousins, and this is a church prohibition, then article 127 applies and the church can legally dispense from that prohibition.

Senator Flynn: I think I see the argument. The point is that as between cousins the prohibition existed at that time, but was recognized only by the church and so would provide for the right of dispensation by the church, and that would be the answer.

Mr. Faggiolo: That is right.

Senator Flynn: I want to make that clear because I have some reservations as to the method of dealing with a problem like this, and I would certainly join with Senator Neiman in hoping that the Department of Justice will look into this and see whether there should be a complete amendment.

The Deputy Chairman: I agree with that 100 per cent.

Senator McIlraith: Did you propose to include any evidence, either as an exhibit or otherwise—for example, the certificate of dispensation or the medical certificate?

The Deputy Chairman: We have both of them here.

Senator McIlraith: I think it would be helpful if they were included in the proceedings.

Senator Flynn: I think they should be printed.

(See Appendices "A" and "B")

The Deputy Chairman: This is in Latin, and I presume everybody has studied Latin—or have they?

Senator Flynn: We can guess at what it means.

Senator Denis: I also have a copy of the birth certificates of the parties, if that is necessary.

The Deputy Chairman: I do not think so.

Are there any further questions?

Senator Flynn: I simply want to put on the record that my questions were really to provide me with a refresher course.

The Deputy Chairman: I am sorry I could not be more helpful, not being a civil lawyer.

Senator Flynn: It has been a long time since I looked at articles 125, 126 and 127.

Senator McIlraith: I move that we report the bill without amendment.

The Deputy Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Deputy Chairman: And we offer them our congratulations and best wishes.

The committee adjourned.

APPENDIX "A"

SANCTISSIMI DOMINI NOSTRI
PAULI DIVINA PROVIDENTIA PP VI
AUCTORITATE

SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM, susceptis precibus ab Ordinario MARIANOPOLITAN rite commendatis, quibus Richard FRITZ et Marianne STRASS eiusdem Dioecesis, postulabant dispensationem super impedimento consanguinitatis in secundo lineae collateralis gradu tangente primum, quia oratrix est neptis oratoris quod obstat quominus legitime coniungantur, prae oculis habitis causis, quae ad optatam gratiam obtinendam afferuntur, ac praesertim firmitas in proposito, Eidem Ordinario committit, ut, si vera sint exposita, servatis canonicis praescriptionibus, dispensationem a memorato impedimento oratoribus benigne largiatur, quo nuptias, prout disiderant, contrahere valeant, contrariis quibuslibet minime obstantibus.

Datum Romae, ex aedibus eiusdem S. C., die 27 Maii 1975.

BY AUTHORITY OF OUR VERY HOLY LORD
PAUL VI, BY DIVINE PROVIDENCE,
POPE.

The Sacred Congregation on the Discipline of the Sacraments, having received a petition duly presented by the Bishop of Ville-Marie in which Richard Fritz and Marianne Strass of the same diocese, request a dispensation from the impediment of blood-relationship in the second degree of the collateral line, next to the first degree, because the female petitioner is the niece of the male petitioner, which impediment prevents their legal marriage, and having reviewed the reasons which are brought to secure the desired exemption, and especially their firmness of intention, empowers the said Bishop that, as long as the information given was true, without prejudice to canonical rulings, he should graciously grant to the petitioners a dispensation from the above-mentioned impediment, so that they may be able to contract marriage, as they desire, without any hindrance at all from any opposing factor.

Dated at Rome, from the house of the said Sacred Con-

APPENDIX "B"

THE MONTREAL CHILDREN'S HOSPITAL

MCGILL UNIVERSITY TEACHING HOSPITAL

February 26th, 1975.

The Hon. John J. Campbell, M.P.,
582-90th Avenue,
Ville LaSalle, P.Q.

Re: Miss Miriam Strass
Mr. Richard Fritz
9205 Bayne Street,
Ville LaSalle.

Dear Mr. Campbell,

Miss Strass and Mr. Fritz consulted us about their proposed marriage. As Mr. Fritz is a half-brother of Miss Strass' father, they wanted to know what the likelihood is of their future children being affected by a consanguineous marriage. There are no known heritable diseases in their families.

From a medical genetics point of view the union of a half-uncle and half-niece is considered to be of the same degree of consanguinity as a first-cousin marriage. Each cell in the body has 46 chromosomes (23 matching pairs). When a baby is conceived, the baby receives one set of 23

chromosomes from one parent, and the other 23 matching chromosomes from the other parent.

A chromosome consists of thousands of genes, each of which works together with the corresponding gene on the matching chromosome. It is generally assumed that each person in the general population carries one or two altered recessive genes. Each of these genes, on its own (heterozygote) is not harmful, but in a double dose (i.e., one from each parent) (homozygote) it may affect development of the child. If a person marries an unrelated person the chances of them both having the same harmful recessive gene is small; therefore there is a small risk of their child inheriting the same harmful gene from both parents and being affected. However, if the parents have a common ancestor, as do Miss Strass and Mr. Fritz in his mother, the risk to each of their children is higher than if they were not related, but is still not a high risk in itself. They have the same risk as first-cousins who are married to each other.

Yours faithfully,

Paige Berman, M.B., B.Ch.

Department of Medical Genetics.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

CPI 12.24
1975



Canadian
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issued No. 25

TUESDAY, OCTOBER 28, 1975

Second Proceedings on the Green Paper entitled:
"Members of Parliament and Conflict of Interest"

(Witness:—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Langlois
Buckwold	McGrand
Choquette	McIlraith
Croll	Neiman
*Flynn	*Perrault
Godfrey	Phillips
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Walker—(20)
Lang	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 10, 1975:

With leave of the Senate,

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Petten:

That the Green Paper entitled "Members of Parliament and Conflict of Interest", tabled in the Senate on Wednesday, 9th April, 1975, be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

October 28, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Godfrey, Laird, Langlois, McIlraith, Neiman and Robichaud. (9)

Present but not of the Committee: The Honourable Senators Greene and Smith (*Colchester*).

In attendance: Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee resumed its examination of the Green Paper entitled "Members of Parliament and Conflict of Interest".

In accordance with the decision taken at its first meeting on the Green Paper on June 10, 1975, the Committee commenced its discussion of the "Guidelines and Proposals for Change" contained in Part IV of the said Green Paper.

At 4:30 p.m., the Committee adjourned until 2:30 p.m. on Tuesday, November 4, 1975.

ATTEST:

Denis Bouffard
Clerk of the Committee

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, October 28, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 2.30 p.m. to consider the Green Paper entitled "Members of Parliament and Conflict of Interest."

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: I am advised that Senator Smith (*Colchester*) will be officially named a member of the committee in a motion to be presented to the Senate tonight. However, I welcome Senator Smith to this afternoon's meeting of the committee.

Senator Smith (*Colchester*): Thank you, Mr. Chairman.

The Chairman: The steering committee met last Thursday and decided, pursuant to the proceedings of our meeting on June 10, to begin a study of the Guidelines and Proposals for Change in Part IV of the Green Paper. This is the order of reference of the committee. Also pursuant to the decision of June 10, the committee will then decide what further information it requires and what witnesses should be called. I assume everyone has a copy of the Green Paper.

Senator Smith (*Colchester*): The "green" senator hasn't, Mr. Chairman.

The Chairman: That matter will be looked after.

Senator Greene: Mr. Chairman, you could make that two, including this "Greene" senator.

The Chairman: As I said, this is what the steering committee decided by way of procedure. The proposals begin on page 26 of the Green Paper. Senators will note that Appendix A to these proposals is a draft of an Independence of Parliament Act, to which we can refer as we study each proposal.

Is the committee in agreement with the steering committee's recommendation regarding procedure? I take it that it is.

Part IV is an introductory section. I do not think we need read it, unless the committee so wishes. It sets out the responsibilities of a member of Parliament and the desirability not only that there should be no conflict of interest, but also that there should not appear to be any conflict of interest. Unless there are questions on the eight numbered paragraphs on pages 25 and 26, Part IV, I will go on to proposal No. 1, which reads as follows:

It is recommended that the legislative provisions pertaining to conflicts of interest of Members of Parliament, with the exception of bribery, be contained in a new act entitled the "Independence of Parliament Act."

Senator Laird: Mr. Chairman, I do not know whether this is the appropriate time to introduce this note into the discussion, but there is a grave question in my mind as to the overall picture on this matter. Is anything to be gained by setting down, in black and white, certain rules, or should we discuss whether or not another system might be better—for example, the system used in the United Kingdom? I am just wondering whether we should consider that question.

The Chairman: That is entirely within the competence of the committee to decide.

Senator Croll: What is the system used in the United Kingdom?

Senator Laird: It is more or less on an ad hoc basis. In other words, there are not a lot of rigid rules; each case is dealt with on its own, subject to certain generalities.

I am wondering—and I would like to know how other members of the committee feel about this—whether anything is going to be gained by reducing to rigid rules what can be done by a member of Parliament—a senator, of course, being included in that category. First of all, by so doing, we may very well eliminate from public life many people who have a real contribution to make; and, secondly, if members of Parliament are bound by rigid rules, some technical approach might be made with regard to any one member of Parliament which would have the effect of excluding him from Parliament under circumstances where it simply would not be warranted.

I admit that this is a terribly broad topic. As I said at the outset, I am just wondering whether or not that angle should be discussed before dealing with the proposals one by one, and I am interested in knowing how other members of the committee feel about it.

Senator Greene: Mr. Chairman, I have some sympathy with Senator Laird's approach. I am somewhat concerned about paragraph 2 on page 25, which states that there should not even be the appearance of conflicts of interest. If that were the case, then what we are really saying is that Parliament should be composed of social and economic units, because everyone who is not a social or economic unit has some interest outside Parliament. If that were the case, no trade union member should be a member of Parliament because there would be legislation which affects labour; no Roman Catholic should be a member of Parliament because he would have a conflict of interest vis-à-vis divorce and abortion laws; no one in any business, or individuals having any professional or business connections, should be a member of Parliament because, by appearances at least, he or she would have a conflict of interest in relation to legislation affecting that particular profession or that particular business.

It seems to me that what the public is entitled to is disclosure rather than any facade which, by its nature, must be phony—that no one has any interest other than his or her parliamentary interest.

Senator Laird: That is what I am getting at, Mr. Chairman.

Senator Godfrey: I guess I am on the other side. In my maiden speech in the Senate, in which I discussed the Foreign Investment Review Act, I spent the first half on my speech talking about this very problem. I used the example of a partner in a corporation law firm taking part in debate on legislation which would affect the clients of that firm, and I came to the conclusion that he could take part in such a debate in a general way.

If you apply it too strictly, a farmer could not talk about farming problems or a doctor about medical problems, and so forth. However, there could be certain circumstances where the conflict of interest would be so direct that it would have to be declared and dealt with.

I see no difficulty in the wording of the paragraph to which Senator Greene has referred, which says:

2. Members of Parliament should make every reasonable effort to avoid even the appearance of those conflicts of interest that are not inherent in a representative democracy.

The very things we are talking about are inherent in a representative democracy. We are going to have businessmen, farmers, members of the medical and legal professions, and so forth, in Parliament.

It is hard to divorce this from the specific proposal. Looking at proposal No. 3 on page 28, I believe that is necessary and proper, and should be laid down in black and white, because I think there would be a great deal of difference of opinion about that. It is all very well to talk about doing this on an ad hoc basis, and so on, but I do not believe that a senator should come to Ottawa and practise law before federal boards or tribunals, and I think that should be laid down in black and white.

Senator Laird: Mr. Chairman, I want to make it quite clear that I am in complete agreement with proposal No. 3. Certainly, I think this is the type of generality that is justified.

Senator Godfrey: But what we are discussing is whether or not we should have proposals such as proposal No. 3 laid down, or should we have them at all.

Is proposal No. 3 already in our rules?

Senator Laird: Yes, I believe so.

Senator McIlraith: I believe it is in our rules.

Senator Godfrey: I might say, every definition I have seen of "conflict of interest," including the one by Mr. Churchill, always referred to appearance as well as action; that one must avoid even the appearance of a conflict of interest, and that is important as far as the public is concerned.

The Chairman: If I may interrupt you, Senator Godfrey, in answer to Senator Greene, the term "conflict of interest" is defined on page 1 of the Green Paper, for purposes of this paper, as follows:

A conflict of interest denotes a situation in which a Member of Parliament has a personal or a private *pecuniary* interest—

A personal or a private pecuniary interest.

—sufficient to influence, or *appear to influence*, the exercise of his public duties and responsibilities.

The word "pecuniary" is emphasized.

In so far as the remarks made by Senator Laird are concerned, I suggest honourable senators look at paragraph No. 6 at the top of page 26, which reads as follows:

6. The rules on conflict of interest of Members of Parliament should assume the form most appropriate to their application and to the general problem area. Those rules which are capable of precise definition and which can, therefore, be objectively tested should usually be set out in legislation. Those rules which can only be stated in subjective language, and must rely for their application on the individual circumstances of each situation, should be set out in a less formal manner.

I think that, in a sense, meets Senator Laird's point.

I might say at this point to Senator Smith that although he is not a member of the committee as yet, he is free to express any views at this stage. The only right he is deprived of is the right to vote, and he will have that, I am told, after this evening.

Senator Smith (Colchester): Thank you, Mr. Chairman.

The Chairman: Senator McIlraith.

Senator McIlraith: Mr. Chairman, I am not quite ready to discuss a particular proposal in a particular way until I have heard more general discussion—for example, what has been done on this subject in the United Kingdom and in the United States.

Looking at proposal No. 5(b) on page 29, it reads:

(b) That Section 11 of the "Senate and House of Commons Act", which permits Members of the House of Commons to hold otherwise prohibited offices in the service of the Government of Canada, if there is no salary or benefit of any kind attached, not be included in the "Independence of Parliament Act"

It is not to be included. I submit that until we have a general discussion we cannot decide to put it in the bill or not put it in, as the case may be. By way of example, I can point out what I think that section means. I will take as an example the commission presently operating under Mr. Justice Abbott. That commission comprises certain paid commissioners who are not in Parliament, but it is also comprised of several members of the Senate and House of Commons. I happen to be on that commission. Rightly or wrongly, I believe I was put on that commission to deal with parliamentary accommodation because I happened to be a member of the House of Commons for quite a few years, because I happened to have been a Minister of Public Works for a few years, and because I now happen to be a member of the Senate.

Before we start discussing whether I should be barred from serving on that commission, which the government has seen fit to create, I would like to know in more general terms what our approach will be to this rather complex subject. I find the subject quite complex and I would like more discussion in generality before we come to the particular clauses.

The Chairman: Of course, in the House of Commons that discussion took place through witnesses. John Reid, as Parliamentary Secretary to the President of the Privy Council, was the principal witness, having had something to do with the drafting of this legislation. They also heard from officials of the Privy Council Office on the general question. We decided to proceed in this way rather than call those witnesses, but if the committee wants a general discussion we can certainly start with a general discussion.

Senator Croll: Why should we not call those witnesses if they have something to contribute, or if there is a possibility that they have something to contribute? Why should we not get outside viewpoints?

The Chairman: I agree with you, but if I recall correctly, at our meetings in June it was decided not to proceed in that way. My own view is that it would be wise if we could have before us Mr. Reid, who described himself in the house proceedings in this way:

I believe I can speak with some authority. I was the Parliamentary Secretary to the previous President of the Privy Council, whose imprimatur appears, the Honourable Allan MacEachen, and I was involved in the discussion, the drafting and the eventual development of the document in the form in which it sits before you.

That introduced the general discussion in the house committee, and Mr. Reid was subjected to questioning for, I think, three or four sittings of that committee.

Senator Laird: How can he know more about this problem than we do?

Senator Asselin: He is an expert.

The Chairman: This was raised at our last meeting.

Senator Croll: I have in mind that we might call some people from the academic world who have special knowledge, who have made studies of these problems and can give us their views, something outside of Parliament, because this affects Parliament. Those views are very important. Some people in the business world have been very critical of us. Let them come and tell us what they think.

Senator Asselin: If we call somebody from outside of Parliament they will not know Parliament better than we do. Even if we call the dean of a university, how can he explain it? He is not a member of Parliament.

The Chairman: After I considered your recommendation, Senator Croll, which was never ruled out, I spoke to Dr. Carrothers, Director of the Institute of Research in Public Policy. You mentioned that as one of the bodies you would summon. Dr. Carrothers, whom I happen to know very well, said, "What do I know about conflict of interest affecting members of Parliament? I have been a university president, I have been a university dean. If you want to know about conflict of interest amongst academics I will give evidence, but I know nothing about conflict of interest in Parliament." He is one of the people you mentioned.

Senator Godfrey: I must apologise for not having been here in June and arriving completely and absolutely unprepared. I shall be here only until 3.30, because I have to attend a meeting of the Joint Committee on Immigration. It appears to me that the members of the committee should read all the evidence that was before the House of

Commons committee. If we then decide we need more witnesses or that the witnesses who gave evidence there should be cross-examined, let us do it. There is no point in spending four days hearing the same evidence that was given by John Reid before that committee. I presume this is what you were talking about last June, was it?

The Chairman: Yes.

Senator Godfrey: Until we have all read that evidence and come to the conclusion that we need more, I do not think we should pass judgment.

The Chairman: Also there is a report of the House of Commons committee.

Senator Neiman: I think this research paper from the library is of great help in giving the background in the States, the United Kingdom and in other provinces. I believe we should study this before we get into the question. I am a little unclear on this and am wondering if we could have a discussion on this document. It deals, in a sense, with members of Parliament and conflict of interest. Should we be looking at possible differences between members of Parliament, differences between members of the House of Commons and the Senate? Should we start with a basic set of rules that cover all members of Parliament? Is there some different or greater onus upon members of the Senate? I would assume that there is a somewhat greater duty for care on members of the Cabinet. I am wondering if we should consider this as we go along.

Senator Robichaud: Some very good suggestions have been made this afternoon on this matter of conflict of interest. However, it would seem to me that we cannot get any stronger or more pertinent evidence from people like John Reid. He is no better authority than any of us on the question of conflict of interest; he is just a member of the House of Commons. I think everything has already been said and printed on the subject of conflict of interest. When I was Leader of the Opposition in the New Brunswick legislature, I remember speaking for two hours on conflict of interest. I had gathered so much information that I ad-libbed for two hours on the subject. There is already so much material in print that I think it would be helpful if we could have somebody gather all the material, and then give us a week or so to study it, after which we could come up with some suggestions.

I do not think any member of the academic world, or anybody from the House of Commons, or anybody from the Senate can help us any more than the material we can read at the moment.

If we had it before us, if we knew where the material was, and if a secretary or somebody were charged with the responsibility of collecting that material and putting it together and giving it to us to read for a week or two, we could bring forward a heck of a good report.

The Chairman: Senator Robichaud, we did that. I sent to each member of the committee six documents. I have them in front of me. They were sent in English and in French. One is entitled "Information prepared in response to requests made by members of the Committee on Privileges and Elections during the consideration of the Green Paper" prepared by the Research Branch of the Library of Parliament.

Another paper is "Conflict of interest avoidance by members of Parliament through registration and disclosure."

Senator Croll: Who prepared that?

The Chairman: The Research Branch of the Library of Parliament.

Senator Croll: Mrs. Carroll?

The Chairman: No, the one I have was prepared by J. A. Gatner, and another one by H. McKenzie and J. A. Gatner. The third is H. McKenzie and J. A. Gatner. Then there is this document—I have the French one—"Conflict of Interest" by M. A. Carroll, prepared in July 1974.

I should add that the House of Commons had some of these people appear before them to discuss the papers they prepared. These papers were prepared in order to familiarize the members of the house with conflict of interest, and with the practice in the U.K. and in the United States. There is also, as I recall it—this is in the Green Paper—a part on the British and American approaches to conflict of interest.

Senator McIlraith: Mr. Chairman, could we clarify the identity of the documents which have been referred to? I have four of them. There is one by M. A. Carroll dated July 1974.

The Chairman: That was the first one.

Senator McIlraith: There is one with the inscription on the cover "Document 3," by J. Gatner.

The Chairman: That is right.

Senator McIlraith: Then there is the one marked "Document 4," by Helen McKenzie and Joe A. Gatner.

The Chairman: Yes.

Senator McIlraith: Then there is the one with the inscription on its cover, "Document 5," Project Officers: H. McKenzie, J. A. Gatner. Are there just the four documents, or are there others?

The Chairman: There are just the four documents. I believe the clerk also sent to each member the speech in the House of Commons by the Honourable Allan MacEachen when he introduced it, and the speech in the House of Commons by the Prime Minister on conflict of interest as it affects ministers. In addition, you have a list, a select bibliography on members of Parliament and conflict of interest.

Senator McIlraith: Yes, that is right.

The Chairman: These are the publications.

Senator McIlraith: Thank you.

Senator Croll: Mr. Chairman, I cannot recall anything outside the Carroll one. This does not strike a note with me at all. Are you sure it was sent to everyone?

Senator McIlraith: Yes.

The Chairman: I instructed the clerk to send it to every member, before we adjourned.

Senator McIlraith: Yes.

Senator Croll: I just did not recall.

Senator Asselin: Would it be possible, Mr. Chairman, to ask the gentlemen who prepared these documents to

appear before the committee and have the documents tabled before us?

The Chairman: It certainly would be possible. The house committee had Mr. Gatner and Mrs. McKenzie appear as witnesses on two or three occasions, questioning them on the papers they had prepared.

Senator Godfrey: Should we read that first before we decide to have them go over the same thing?

The Chairman: It is for the committee to decide.

Senator Neiman: I would prefer we read them ourselves, rather than bring these people back and ask them the same questions they have been asked before another committee.

The Chairman: You will have all the answers in the proceedings of the house.

Senator Neiman: Yes, that is right.

The Chairman: I am entirely in the hands of the committee. We can call them back if you want to, if it will serve any purpose.

Senator Robichaud: Mr. Chairman, I do not think it would serve any purpose. It would be just a repetition.

The Chairman: I feel that way. As I say, it is for the committee to decide.

Senator Laird: Here is the whole thing right here.

The Chairman: Here are the proceedings.

Senator Greene: Mr. Chairman, I hope that the committee will not pass cavalierly over Senator Neiman's basic suggestion, as I understand it, namely, that our main function here is to distinguish between the Senate and the Commons as to rules.

As a Commoner, I think I would be perfectly entitled to take the stand. My responsibility is to my electorate. I will answer to them for my conduct and propriety.

As appointed legislators that approach is not open to us. We are responsible to the country at large. We are not responsible to the government or to the Commons for our conduct. We are responsible to the country at large, much more than an elected representative of a particular constituency would be. Under those conditions it may be that we should have a very different set of rules applicable to us from those which would be applicable to the one that says I will answer to my constituency. I think the electors were quite proper, if that was their choice, in electing Mayor Kelly when he was reposing in jail. That was between him and the electorate. We do not have that option and, therefore, maybe the rules are very different vis-à-vis senators.

The Chairman: It was suggested that this Green Paper be referred to a joint committee, and the government decided not to do so. I think one of the reasons was that perhaps there are considerations applicable to the Senate that are not applicable to the House of Commons. That is what we should be discussing.

Senator Godfrey: I just want to say I did get the impression—Senator Neiman, correct me if I am wrong—you did not say it was the main thing we should be discussing; you just said that is one of the things.

Senator Neiman: That is one of them. Of course, it is an important aspect, I believe, Mr. Chairman.

Senator Croll: Mr. Chairman, if there is a distinction, and undoubtedly there is—and Mr. Sharp has explained why it was not referred to a joint committee—then some questions are perhaps more relevant to the House of Commons while others are more relevant to the Senate. That is exactly why we should be asking our own questions and getting our own answers rather than be satisfied with what they already have on record.

Senator Langlois: Mr. Chairman, Senator Greene and Senator Croll, while I do not agree with them, to my mind brought us pretty close to the crux of the matter. All these documents which have been referred to us deal with the avoidance of circumstances which would very likely put you in a situation of conflict of interest or an appearance of conflict of interest. The determination of conflict of interest is a matter of conscience; it has nothing to do with your position as an appointed legislator. All this documentation is aiming at the avoidance of such situations.

I do not think you are benefiting very much by applying the principles laid down in these writings because you are not dealing with the subject matter at all.

I do not know if I am making myself clear. I do not see how we can make a distinction between the fact that you are an elected representative or an appointed representative.

The Chairman: If that is what you are saying, I agree with you, senator.

Senator Robichaud: Mr. Chairman, I do not make that distinction between a senator and a member of the House of Commons. I think we have equal responsibilities. In that respect, there are no differences. With respect to the suggestion that conflict of interest is a matter of personal conscience, I cannot accept that, because anyone can have a most broad conscience, allowing anything to happen. In my opinion, there must be guidelines, there must be ground rules. It is up to us to establish them.

As members of the Senate, although we are appointed, we have equal responsibilities owing to the fact that we vote on all bills passed in the House of Commons. For those reasons I say there cannot be any distinction between this house and the other place.

The Chairman: On that point let me refer you to page 3 of the Green Paper, specifically to the second and third paragraphs which I think I should read:

It can be argued that Senators also have unavoidable conflicts of interest. Senators are appointed and the historical qualifications for appointment, as set out in the British North America Act, suggest that it was intended that Senators represent particular segments of the community. But the Canada of today is vastly different from the Canada of a century ago and there is a widespread feeling that these particular objectives of 1867 are no longer relevant.

The fiduciary requirement imposed on Senators, as on Members of the House of Commons, is, and must be, primary and overriding. To ignore or minimize this is to seriously risk creating a public atmosphere which could interfere with the effective operation of the Senate and the prestige of individual Senators. With respect to particular facets of any system of conflict of interest regulation, there may exist a justification for

differentiating among public officials involved. However, those who see the necessity for adopting a different standard for Senators and Members of the House of Commons should be obliged to provide the justification. There can be little doubt that as the importance of restricting conflicts of interest in democracies increases, certain other considerations, including the representation of specific groups, will have to be at least partially set aside.

Senator McIlraith: Mr. Chairman, are we not a bit at cross purposes here? It seems to me that the principles of conduct to be applied should be the same for senators and members of the House of Commons, but where the difference lies is in another area, with deference, Mr. Chairman; it is not directly dealt with in the two paragraphs you have just read. It is in the remedy available when those principles have not been observed by members of the Senate or of the House of Commons. In the one case the effective remedy, after you have set up the standards and there is a failure to observe those standards, lies with the electorate; in the other case, which is our own in the Senate, another remedy must be provided—some other corrective procedure. The corrective procedure will probably, in the Senate, have to be given either through authority of legislation, with the remedies through the courts or through the Senate itself, or within the Senate itself, with appropriate provisions of disciplinary action, if there is a breach of our standards.

But there is a substantial difference there in the treatment of the subject. It is not a difference of the one from the other with respect to the standards to be applied, but, rather, a difference in the action to be taken when there is a breach by one of the other of the common standards.

That will be the problem for us. We may find ourselves, when we are through with this subject, leaning heavily on the electorate by direct and immediate action in the election process dealing with the breach on the part of the members of the House of Commons, but we may—in fact, we do, require to take a different attitude in dealing with a breach of the standards on the part of the Senate.

Therefore, first we have to examine our approach to setting up the standards, what should be the standards of conduct in this area. Having done that, we then have to come to the harder question of how we apply the censor or remedy, corrective action, which is, with deference, Mr. Chairman, really what is set out in the Green Paper.

That is why I find it difficult to deal with most, or at least many, of the recommendations in the Green Paper before having a general discussion of the standards, what they should be and how they should be approached or declared.

The Chairman: Are the basic standards not set out in this Green Paper?

Senator McIlraith: I consider that the Green Paper has an innate weakness in that it has mixed remedies, or remedial action, with the clear setting out of the principles by themselves and how they should be stated in the legislative chamber. In other words, they have gone right into the remedies for the breach of conduct in the legislative chamber before dealing with the method of setting up the standard in the chamber.

Senator Asselin: Mr. Chairman, if I understand him correctly, Senator McIlraith is asking for a general discussion on the subject before studying the main guidelines in

the Green Paper before us. I think it is obvious, however, that even if we decided to do so, before we could have a general discussion we would have to have guidelines on which to base that discussion. Otherwise, the type of free discussion which would evolve would lead absolutely nowhere. Further to that, there is no need to cast about for guidelines to use, since contained right in this Green Paper there are many guidelines on which we can pronounce our agreement or disagreement.

The Chairman: That is right. That is why the steering committee thought it should proceed in this way. It was our opinion that out of our discussion of these guidelines we would draw our own conclusions.

Senator Godfrey: Yes, and then we could come to the remedies later. As Senator McIlraith suggested, we should separate the remedies and guidelines, leaving the remedies until the end.

The Chairman: That is right.

Senator Godfrey: I am afraid our discussion will wander all over the place if we do not focus on particular guidelines, and in my opinion proposal No. 3 looks like a likely one to begin with.

Senator Asselin: Well, I would suggest proposal No. 4, which is found on page 29. We could discuss that and amend that proposal, but the first thing I think we should do is start with some basic guidelines, and the point I am making is that we have those basic guidelines right here.

The Chairman: As I see it, honourable senators, Part IV is comprised of two parts. It is headed, "Guidelines and proposals for change." There are six guidelines and 25 specific proposals which it is suggested should be covered by legislation, which is the draft Independence of Parliament Act.

You know, this is a green paper; it is not a white paper; it is not a policy which has been adopted; it is a preliminary suggestion only.

If you wish, we can start by reading the guidelines which are set out on pages 25 and 26 of the Green Paper. Shall we do that?

Hon. Senators: Yes.

The Chairman: Then, if you have any comments as I go along reading them you may interrupt.

By the way, when the term "member of Parliament" is used here, it covers both senators and members of the house.

1. A Member of Parliament is a trustee of public confidence and must perform and appear to perform his duties in a manner reflecting the highest degree of concern for the public interest. Moreover, a Member of Parliament must at all times ensure that his actions do not detract from the dignity of Parliament, and the respect and confidence which society places in it.

Senator Laird: Who can argue with that?

Senator Langlois: You!

The Chairman:

2. Members of Parliament should make every reasonable effort to avoid even the appearance of those conflicts of interest that are not inherent in a representative democracy.

3. Where possible, the rules on conflict of interest should be formulated so as not to restrict unduly candidacy for the Canadian House of Commons or unnecessarily prevent any group in society from holding membership in the House of Commons or Senate.

This is what Senator Laird and Senator Greene suggested earlier.

Senator Laird: So we will not argue with you on that, Mr. Chairman.

The Chairman: You are not arguing with me. I had nothing to do with the drafting of this Green Paper.

Senator Croll: Mr. Chairman, how does a group hold membership in the Senate?

The Chairman: You have been in the Senate longer than I have.

Senator McIlraith: I suppose, now that Indian land claims are coming up, that that may have something to do with it.

Senator Croll: Are you not reaching awfully far for something that is not there?

The Chairman: I think this means to prevent individuals who belong to any group in society from holding membership.

Senator Laird: I am sure that is what it means.

Senator Neiman: Could we say, "a member of any group in society"?

The Chairman: Yes. We do not have to amend this, but this is what it means.

4. The rules on conflict of interest should attempt to provide the public with that information which is relevant to the question of conflict of interest while safeguarding the individual Member's right to privacy regarding information which the public does not require.

Senator Robichaud: Mr. Chairman, are we adopting these guidelines one after the other?

The Chairman: We are not adopting anything now. We are reading the guidelines, and studying them, and in due course we will draft a report.

Senator Godfrey: But you will read each one, and if someone wants to comment he should comment at that time.

Senator Asselin: With regard to "safeguarding the individual member's right to privacy regarding information which the public does not require", what does that mean?

Senator Langlois: Confidential disclosure by a member of Parliament.

Senator Greene: I would think there should be a period after the word "privacy", and that the rest of the words should be deleted, because you are not going to persuade the media, at least, that there is such a thing as information that the public does not require.

The Chairman: I know you will not convince the media. What it refers to, Senator Asselin, I believe, is a situation in which public disclosure is not necessary. The press will

argue with you that there is no information to which the public is not entitled.

Senator Godfrey: I would like to see that part in, which says, "which the public does not require", because that limits the amount. I do not think the public has the slightest bit of interest, for example, in knowing how many Canada savings bonds you have, or what you have in the bank.

Senator Croll: Who is to be the judge of what the public does not require?

Senator Greene: You have never been on Gordon Sinclair's program.

Senator Godfrey: But there is certain information that the public is entitled to. If you are the Minister of Transport and you hold stock in CPI Investments, or CPR, no one could surely be under any doubt that you should declare that; but if it turns out that you have stock in the T. Eaton Company, that is another matter.

Senator Croll: Supposing your wife holds some of that stock?

Senator Godfrey: That should be declared too; there is no doubt in my mind about that.

Senator McIlraith: Let me give you a case that arose at one time. Government action had been taken to restrict the use and availability of certain kinds of cotton used in the making of children's underwear. The question arose as to whether or not my children wore the underwear, which we now jocularly refer to as the Stanfield type underwear, during that period of time. That was a very unpleasant experience, I might say, and I might say also that the children at that time did not wear that kind of underwear; but this was a question that seriously arose, and it shows how absurd rules on conflict of interest can become. As it happened, the matter was disposed of by disclosing that the children wore a type of dress that their mother made for them without any underwear under it on the top half, and in the bottom half a kind of shorts made of the flat type of material that I believe is called broadcloth, that a rather outstanding Ottawa woman made for them.

Senator Croll: She was a Liberal.

Senator McIlraith: But that shows the type of absurdity that we can get into in spelling out these infernal little rules of conflict of interest. For the life of me, I always regarded the incident we have just referred to as not a matter of public interest at all. I regarded it as an intrusion upon privacy, and I still do.

Senator Godfrey: Would you not have liked to point out that the public does not require that information, and therefore they could go to hell? It is set down right here.

Senator McIlraith: That is my point. Under any test they could argue that that was information which the public did require, because the government had taken controlled measures to eliminate the manufacture of that kind of children's underwear.

Senator Godfrey: But that is absurd.

Senator McIlraith: That is the point I am making.

Senator Godfrey: If I were you I would say that this is not information that the public requires, and I would tell

them to go to hell. And I would be able to point to this guideline.

Senator McIlraith: Well, the situation I refer to applied to many members, and was a current issue at the time. That is the kind of thing you get into when you go in for these silly little definitions.

Senator Neiman: Mr. Chairman, is there not going to be some provision for a registrar, or someone of the kind, who would probably act as a referee? Is this not one of the ideas in the Green Paper, that any question of possible public interest can be referred to some such authority? I know this has been recommended. It is in the House of Commons report.

The Chairman: It is in the House of Commons committee report.

Senator Neiman: Also, very serious matters can be referred to the Federal Court. However, I think it would be just as well to have somebody appointed who would be able to act as a referee and make a decision such as that.

Senator McIlraith: Yes, and to eliminate the absurd questions that will arise. There used to be such a process.

Senator Neiman: I think that was suggested in the House of Commons report on this matter.

The Chairman: I think we have to be very careful in deciding on what information the public requires or does not require. With the growing intervention of government in the economy of the nation there is more and more information that the public does require. I think we have to face that fact.

Senator Greene: I do think, Mr. Chairman, that the inclusion of those words—"while safeguarding the individual Member's right to privacy regarding information which the public does not require"—is going to be like waving a red rag in front of a bull to the media, who are going to say, and may quite properly say, "We are the ones who determine what information the public requires, not the members of Parliament."

Senator Croll: Should the media be the ones to do that? Is that their job?

Senator Greene: I think, if you include those words, you certainly are inherently accepting that fact. I think if we stop at "privacy" then that question of what is private remains in the parliamentary conscience and area, whether personal or collective.

The Chairman: In any event, it is not proposed that these guidelines be enacted by legislation. The draft bill does not include these guidelines, so it is not a matter of enforcement of somebody's right to privacy or the right of the public to information.

Senator Godfrey: I just do not follow Senator Greene's last argument. Why should you put in that what the public requires should be decided by the media rather than by the Senate and the House of Commons? The word "requires" is a strong word, and the public must "require" this, and the public does not require to find out what kind of underwear one is using, or anything like that. It is just absurd. The members of the press may have wanted it, but the public did not require it.

Senator Croll: Mr. Chairman, does it not make it easier, when somebody says he requires it and you have an argument, if you simply say, "You don't require it."

The Chairman: You are right, Senator Croll. Senator Godfrey, you are suggesting an exception, that privacy with respect to underwear should be protected. Is that right?

Senator Godfrey: Absolutely, and I think it would help if in such circumstances we were to tell them to go to hell.

Senator McIlraith: But there was legislation on this subject at the time.

The Chairman: I think we have threshed that one enough. Then we come to the fifth guideline proposal which says:

5. The right of members of the public to equal access and impartial treatment by government officials should be respected at all times.

Senator Langlois: This has nothing to do with conflict of interest. What is it doing in there?

The Chairman: I don't know. Mr. du Plessis points out that it probably should read:

The right of members of the public to impartial access to and impartial treatment by government officials should be respected at all times.

But I cannot see what this has to do with conflict of interest.

Senator Godfrey: Perhaps what they mean is that they think that some people are acting in an improper way when they are being interviewed, or something or other like that.

Senator Croll: Well, every day you find a motion in the House of Commons where a member says, "I would like to get information on such-and-such." The answer is, "Refused." That is the end of it. So what are they talking about?

The Chairman: With the permission of the committee, I shall make an inquiry to find out what this fifth proposal has to do with the matter of conflict of interest.

Senator Neiman: Senator Croll may be on the right track. It may be that some minister might say that certain information is confidential and not available to other members of Parliament and not necessarily to members of the public. The question arises quite frequently in the House of Commons.

Senator Greene: If that is the case, then it abrogates the principle of confidentiality as between an official and his minister.

Senator Godfrey: Well, another committee, a joint one, is inquiring into that right now. I am speaking of the consideration of statutory instruments and regulations.

The Chairman: I have already read the sixth proposal, but perhaps I should read it again here:

6. The rules on conflict of interest of Members of Parliament should assume the form most appropriate to their application and to the general problem area. Those rules which are capable of precise definition and which can, therefore, be objectively tested should usually be set out in legislation. Those rules which can

only be stated in subjective language, and must rely for their application on the individual circumstances of each situation, should be set out in a less formal manner.

Then there is proposal No. 7 which reads as follows:

7. The public should be granted a limited avenue to initiate investigations into apparent violations of the statutory provisions regarding conflicts of interest.

Senator Asselin: I don't like that at all. It is not for the public to judge a member of Parliament. I think the information would come to the board investigating the conduct of a member of Parliament; but I do not accept that the public should be the judge.

The Chairman: This is covered again in proposal 18, on page 35, where it says:

It is recommended that the Attorney General of Canada be charged with the enforcement of the provisions of the "Independence of Parliament Act". In addition, members of the public should be able to request the Attorney General to commence legal proceedings against a Member of Parliament if it is believed a Member has violated the provisions of the Act. If the Attorney General refuses to commence legal proceedings, for whatever reason, any member of the public may make application to the superior court of the Province, from which the Member of the House of Commons was elected, or Senator appointed, for a declaration stating that the Attorney General has failed to commence legal proceedings. Upon such application, the court should be empowered to make such a declaration and forward a copy of it to the Speaker of the House of Commons or Senate and the Attorney-General of Canada—

Senator McIlraith: Is that intended, Mr. Chairman, to be a removal of the responsibility of the minister to the elected members of the House of Commons and the substitution, for that principle of responsible government, of a decision of a court? If it is, I am not prepared to take it.

Senator Laird: Mr. Chairman, could I take this a step further, since I do not know the answer? In the draft act, is there anything dealing with this particular problem?

The Chairman: Well, it says after that "(See discussion draft, clause 16)." And then on page 46, under the heading "Public Recourse", we have clause 16 which is as follows:

16. (1) Where a person has reasonable grounds for believing that the Crown has a cause of action against a Member or Senator for an offence or for recovery of a debt due to Her Majesty under section 13 and that the Attorney General of Canada has failed or refused to institute legal proceedings against the Member or Senator, that person may make application to a superior court of the province

(a) where the electoral district from which the Member is elected, is located, or

(b) from which the Senator is appointed,

for a declaration that there exists

(c) evidence sufficient to justify prosecution of the Member or Senator, for an offence against this Act, or

(d) evidence sufficient to justify the institution of legal proceedings against the Member or Senator, for

recovery of a debt due to Her Majesty under section 13.

Senator Croll: That is talking about debt and the recovery of a debt; but there is the usual due process for the recovery of a debt.

The Chairman: If you look at clause 13, on page 45, there you will find under "Profits, salaries or other remuneration are debts due to the Crown" the following:

13. A Member or Senator shall account for and pay over to the Crown

(a) any profit derived by him from participating in a government contract in contravention of this Act, and

(b) any salary or other remuneration received by him from holding an office, commission or employment in contravention of this Act,

and any such profit, salary or other remuneration is a debt due to Her Majesty and recoverable as such in any court of competent jurisdiction by the Attorney General of Canada.

I suppose clause 16 envisages the situation where an attorney general does not act, which in turn would entitle a member of the public to try to force him to act.

Senator Neiman: Mr. Chairman, I wonder whether it would be better for us simply to keep those provisions in mind and return to them, taking all the sections in order. Then it would be less confusing for us all.

The Chairman: That is what I propose to do at the outset and I will go along with that.

Guideline No. 8 reads as follows:

Through a process of continuing review Parliament should ensure that the legislation and the rules governing conflict of interest are relevant to changing situations.

This concludes the guidelines, which lead up to the proposals. You will note that the introductory paragraph reads that:

—ideas have been borrowed, especially from the British and American examples. The main objective is to propose new rules which will deal more efficiently with current conditions and correct those injustices and problems which exist in present Canadian practice.

The first proposal reads as follows:

It is recommended that the legislative provisions pertaining to conflicts of interest of Members of Parliament, with the exception of bribery, be contained in a new act entitled the "Independence of Parliament Act."

Are there any comments in relation to the first proposal, which involves removing from the Senate and House of Commons Act and the House of Commons Act certain provisions pertaining to conflict of interest and embodying them in the new Independence of Parliament Act?

Senator Croll: Had we not better be informed of what is contained in those acts? My memory with respect to them is not very good. Mr. du Plessis should let us know their contents.

Senator Greene: Judging from the discussion to date, Mr. Chairman, I will certainly move on second reading

that the style and title of the act be changed to "The Abrogation of the Independence of Parliament Act" and "The Demise of Representative Parliament".

The Chairman: I will take that as notice, Senator Greene. I draw your attention, Senator Croll, to the fact that on page 49 the relevant sections of the Senate and House of Commons Act are reproduced, and on page 56 you will find the relevant sections of the House of Commons Act.

Senator Neiman: I think that the proposal is sensible; we wish to have all the provisions contained in one act, rather than scattered through a number of acts.

Senator McIlraith: What is contained in sections 25 to 47 of the Senate and House of Commons Act? They are omitted from this publication. Could we be informed of their subject matter?

The Chairman: I gather that those are not relevant to the subject with which we are now dealing, but Mr. du Plessis will inform you as to their content.

Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel: They deal with the examination of witnesses, according to the heading over section 25. I will read some of the marginal notes: Section 26, Examination under oath; section 27, Administration of oath; section 28, Affirmation; under the heading Speakers' Salaries, section 33, Salaries of Speakers and Deputy Speaker; under the heading Indemnity, section 34, Sessional allowance.

Senator McIlraith: It would appear at this stage that, since there are two different subject matters, separate legislation should apply.

Mr. du Plessis: Yes.

The Chairman: The term "Independence of Parliament", by the way, does appear in the present Senate and House of Commons Act. You will note on page 51, section 10 and following—

Senator McIlraith: Section 10 is really the one that has been important and questions under it have recurred from year to year.

The Chairman: It is these sections that deal with possible conflicts of interest under the heading of "Independence of Parliament". I think it is sensible, if honourable senators agree, that there should be a special act dealing with this particular matter.

Mr. du Plessis: The title of the bill should indicate that the bill deals with the independence of members of Parliament, because surely there is no question in any one's mind that Parliament is not already an independent institution. The proposed act is certainly not an act to establish the independence of Parliament, but to ensure that members of Parliament, as stated in the Green Paper, "will remain independent of any offices or interests which might unduly influence them in the execution of their public duties." I have a problem with the title of the act, because I do not think that the title should give the impression that it is the independence of Parliament that is dealt with in the act.

Senator McIlraith: It is the independence of members of Parliament.

Mr. du Plessis: That is right, and that would be my only comment in that connection.

Senator McLraith: Perhaps before we adopt the proposal we should return to that. The first point is, do we wish to have two pieces of legislation?

The Chairman: Did we agree that it is desirable that there be one act dealing with conflict of interest?

Hon. Senators: Agreed.

The Chairman: The second proposal is headed "Corrupt Practices and Prohibited Fees:" and reads as follows:

It is recommended:

(a) That the provisions regarding bribery which are presently found in the "Criminal Code" in Section 108 remain in this form

(b) That a provision be inserted in the "Independence of Parliament Act" requiring the automatic disqualification from membership in the House of Commons of any Member convicted of treason, bribery or of any indictable offence for which he is sentenced to death or to imprisonment for a term exceeding five years.

Senator Asselin: Why is the Senate not mentioned, as well as the House of Commons?

Senator Laird: That leaves it wide open for us in the Senate.

Senator Neiman: We do not suffer any sanctions, either, under the provisions of the act as it now stands. There is an automatic disqualification for members of the House of Commons under the provisions of the present act, but there is no mention made there, again, of the Senate. That is a matter we should consider further.

The Chairman: The proposal continues as follows:

(c) That Standing Orders 76 and 77 of the House of Commons, which relate to the offences of bribery and corrupt electoral practice, remain in the Standing Orders.

The reasons for the recommendation are listed on page 27. I do not know if you wish me to read them, as they seem to be convincing.

Shall I go on to proposal 3? If any honourable senator wishes to read what appears before it, I shall take my time.

Senator Neiman: Referring to Proposal 2(b), I would like some qualification regarding the term of imprisonment not exceeding five years. I notice the same definition is in the present act. It seems to be phrased in very general terms. There is a wide variety of crimes for which one could be imprisoned for a term of five years. I do not know why that term was decided upon and a member is then automatically disqualified. I would feel more comfortable if the offences or types of serious crimes were defined.

Senator Croll: I assume they did not want to say two years less a day or it would hit too many senators!

Senator Greene: Five years is the maximum length of a Parliament. A member would not be around to take his seat anyway, so they might as well kick him out. Perhaps that is the logic of it.

Senator Neiman: It seems to be a strange way of defining it.

Senator Langlois: What is the reason for leaving out members of the Senate in proposal 2(b)?

The Chairman: I was just asking Mr. du Plessis about that. I do not know why we should be exempt.

Senator Neiman: Perhaps that is one area in which they want us to rule. Senators are also exempt under the present act. There is a section covering members of the House of Commons, but there is nothing similar for members of the Senate.

The Chairman: I have asked counsel to make a note of that. I think it should cover both houses.

Senator Greene: Tell them we shall be very hurt if we are left out.

Senator Neiman: Is there any reason why we should be treated differently? It should be the same. That is an improvement we could suggest in the present wording.

Senator McLraith: Regarding section 682 of the Criminal Code, presumably:

only those holding offices under the Crown or other public employment—

would:

vacate their offices upon conviction for treason or an indictable offence—

Members of Parliament may have been left out because they are dealt with under the Senate and House of Commons Act. We will have to look at that when we come to the Independence of Parliament Act, to see that both senators and members of the House of Commons are included. The paragraph is rather brief in dealing with the subject. It is not sufficiently explanatory.

The Chairman: We come now to proposal 3.

It is recommended that the following provision be incorporated in the Standing Orders of the House of Commons and the Rules of the Senate:

A Member (Senator) shall not advocate any matter of cause related to his personal, private or professional interests among Members or Senators, or among public servants, or before any Government boards or tribunals, for a fee or reward, direct or indirect.

Senator Robichaud: I agree with the principle, but disagree with the word "(Senator)."

Senator Langlois: If, under the proposed legislation, a member of Parliament means also a member of the Senate, as it should, why put "Senator" in brackets?

Mr. du Plessis: Because of the opening words of the proposal, senator. You would have to read it. If you are a member of the House of Commons, you would read it as a member; and if you are looking at it from the point of view of incorporating it in the Rules of the Senate, you would use the word that is in brackets.

Senator Langlois: Why not use the term "member of Parliament?" That would cover both.

Senator Robichaud: "A member of Parliament or a senator."

Mr. du Plessis: In the Rules of the Senate we refer to senators and not members of Parliament, because we are dealing only with the Senate.

Senator Langlois: I am not an expert in drafting, but if, when enacting legislation, you give different meanings to the same words, you invite confusion.

Senator McIlraith: They are advocating, in the proposal, that the Rules of the Senate should be amended to include the clause in this language, and that the Standing Orders of the House of Commons be amended to include this clause. However, their method of making the point is rather clumsy and I hope we can improve the draftsmanship, if we adopt it.

Mr. du Plessis: They should have repeated the same rule, and used the word "member" in the first rule and the word "senator" in the second rule. That would have avoided the use of brackets.

Senator McIlraith: Or the phrase "as the case may be." There is a matter of substance here that bothers me. It says:

shall not advocate any matter or cause related to his personal, private or professional interests among—

Let us take our own case. If one is advocating certain changes in the structure of the courts, such as the court of appeal, as happens in the creation of a federal court, the proposal means that those senators who are lawyers cannot discuss the subject with other senators.

The Chairman: Senator, it says:

for a fee or reward, direct or indirect.

Senator Neiman: You have to read the whole thing, Senator McIlraith.

Senator Laird: There has to be money involved.

Senator McIlraith: There is a looseness of language here which fails to express accurately the intention of the clause. The language is not good in prohibiting what it is intended to prohibit.

Senator Neiman: Mr. Chairman, may I suggest that paragraph two might well read "among members of Parliament"?

Mr. du Plessis: If it said members or senators, it would accomplish what you have in mind, senator.

Senator Neiman: Except that we object in principle to the differentiation between members and senators.

Senator Greene: The preface to the Green Paper refers correctly to members of Parliament, including senators and members of the House of Commons. They start off on the right foot by saying, "Let us have one act, which shall be an act of Parliament, applying to both." They then get off the track and go back to amending the Standing Orders of the House of Commons and the Rules of the Senate. If we are to have one bill of Parliament to apply to both the Commons and the Senate halves of Parliament, it should be implemented within that act of Parliament, and we should not have to worry about the Rules of the Senate.

Senator Neiman: That is a good point.

Senator Robichaud: Mr. Chairman, according to your interpretation of this, supposing you, yourself, were in trouble with the income tax people—

Senator Greene: Perish the thought.

Senator Robichaud: —and I, being a senator and a lawyer, and an expert in income tax matters, became your solicitor, could I appear on your behalf for a fee before the Federal Court?

The Chairman: I do not think so.

Senator McIlraith: No.

Senator Robichaud: In that case, I am prohibited from becoming an expert in the area of taxation, or at least from charging a fee and appearing before the Federal Court.

Mr. du Plessis: Are you talking about a situation that would arise where this proposed rule would be in effect?

Senator Robichaud: Yes.

Mr. du Plessis: I doubt that the expression "any Government boards or tribunals" would cover the Federal Court.

Senator Greene: It would certainly apply to the Tax Review Board.

Mr. du Plessis: The word "court" is not mentioned in this proposal, and I think the intention is to exclude the Federal Court. I think we have to look into the use of the word "tribunal" as it is now employed in the statutes and in other rules.

Just looking at that, my impression is that the intention of those who drafted this particular proposal is that it should not include the Federal Court. Otherwise, they would have used the words "any court" or "any federal court", or something of that nature that would cover the federal court.

Senator McIlraith: Actually, the printed matter below proposal No. 3 is much better than the heavy face type contained in the proposal itself. It is the draftsmanship of the proposal itself that is clumsy and unclear. What the draftsmen are trying to get at, as expressed in the printed material below the proposal, seems to be quite proper and quite reasonable.

Senator Laird: Taking Senator Robichaud's example, Mr. Chairman, if he, as a tax expert, appeared for you in a tax case before either the Tax Review Board or the Federal Court, he would not be guilty of any form of conflict of interest, in my opinion. The reason I say that is that he would not be appearing before a government tribunal.

By the way, there is no doubt about the fact that the Tax Review Board is a court of record. It is not like a tribunal created under an act to administer something. It is a court of record. In other words, its decisions are reported, so it is in the same league, I suggest, as the Federal Court.

I would differ from those who said that Senator Robichaud could not appear on behalf of some person before the courts, whether it be the Tax Review Board, the Federal Court or the Supreme Court of Canada.

Senator Langlois: For a fee.

Senator Robichaud: In other words, Mr. Chairman, I lose my ability to practise law in the area of my expertise by the mere fact of becoming a senator.

Senator Laird: Of course, if you were to take on a client other than a member of Parliament, you would be home free. I do not think anyone would argue that there was a conflict of interest.

Senator Neiman: It does not say that.

Senator Greene: That is not what the rule says.

Le sénateur Asselin: Monsieur le président, vous devriez lire l'en-tête, je pense que c'est significatif, mais, c'est encore plus confus.

Le président: Oui, vous avez raison.

What we have to determine is what the word "tribunal" means, and that, I think, is a term used elsewhere.

Mr. du Plessis: Perhaps it is defined in the proposed model bill.

The Chairman: No, it is to be incorporated in the *Standing Rules and Orders*.

Senator Greene: If proposal No. 3 is validated, it would certainly preclude an honourable senator from acting as counsel in an income tax case or, for that matter, from discussing with the assessor the client's problems. It would mean, really, that senators would have to give up the practice of law in any field that would involve the federal Public Service.

Senator Neiman: I would think so.

Senator Greene: That may be all right for a member of the House of Commons who makes more money than a member of the Senate, but surely the stipend of honourable senators is set on the premise that one has to make a living elsewhere.

The Chairman: Perhaps we should read the last paragraph on page 28, which is as follows:

It is suggested that the proper forum for the regulation of prohibited fees be the rules of each House rather than statutory provisions. The benefit of having such a provision in the rules is that the House or Senate, if required, can elaborate on the interpretation of the provision as it relates to particular situations. More specifically, the prohibition against practice before government boards and tribunal may require further qualification. The relationship between public duty and the vast array of possible private activities is so complex that any final enumeration of conflicting situations would probably be impossible. The provision is sufficiently specific however, that it may result in a restriction of the scope of the professional practice of Members of the House of Commons and Senators. It is felt that such a restriction is necessary.

Senator McIlraith: That would mean I would have to stop phoning the income tax department about my sister-in-law's income tax return and the returns of my four sisters.

The Chairman: Only if you charge a fee.

Senator McIlraith: No, it is not as simple as that. If it were that simple, I would have no objection. It is for a fee or reward, direct or indirect, and in many cases there have been direct rewards from friendly sisters.

The proposal, as drafted, does not accomplish what is intended. The language is too general and too imprecise. I do not quarrel with what I think is intended to be accomplished by the proposal, but I do quarrel with the language. I think the language reduces the situation to an absurdity.

The Chairman: What do you think is intended, Senator McIlraith?

Senator McIlraith: I think the intent is to deal with situations where members of Parliament are using their offices at the same time as they are practising their profession before federal tribunals or public servants who may be made to feel that they are in an inferior position, and that the effect of the person appearing before such tribunals, being a member of the House of Commons or a senator, amounts to an undue advantage to the person or persons being represented by that member or senator.

I think that is the type of situation the draftsmen are trying to deal with, and properly so. I have no objection to that kind of situation being dealt with, but I do not think that is what is being accomplished by the language contained in the proposal.

Senator Asselin: Mr. Chairman, I am somewhat confused as to exactly what this proposal means. I think the committee should have more information on it. Perhaps the draftsmen could come before the committee and give a full explanation as to exactly what this proposal means.

Senator Langlois: Mr. Chairman, if it is the intention to restrict in any way the practice of members or senators who are also members of the legal profession, I think all honourable senators who are members of the legal profession should resign from this committee right now because we are dealing with what amounts to a conflict of interest.

Senator Robichaud: That is correct.

The Chairman: We are not now, but we will be if—

Senator Langlois: We are discussing this particular matter. We are in a conflict of interest situation right now. I think all members of the committee who are also members of the legal profession should resign from the committee right now.

Senator Robichaud: The guidelines that are going to be adopted by this committee are going to be the guidelines adopted by all provincial legislatures. As you are aware, Mr. Chairman, most provincial legislatures sit an average of two months a year and the members have to earn a living during the remaining 10 months. If those members of provincial legislatures who are also members of the legal profession have to abide by these rules, as strict as they are, they are going to starve to death.

The Chairman: You say that even if the word "tribunals" does not mean courts of law.

Senator McIlraith: The National Energy Board.

Senator Langlois: Any administrative board of any department.

Senator Greene: Public servants.

The Chairman: Our counsel, Mr. du Plessis, makes a suggestion to me which I submit to you. It is recommended that this clause be incorporated in the Rules of the Senate. He suggests that it might be referred to the Standing Committee on Standing Rules and Orders, with or without a recommendation.

Senator Laird: If I might interrupt, I know that the chairman of that committee would take the stand that there had to be a recommendation from us on what was to be done. After all, what is worrying Senator Asselin and others is perhaps unnecessary. What force do these proposals have unless they are reduced to some form of

enforceable legislation? The way they suggest legislating here is not in the draft bill but in the rules of the Senate and the House of Commons. If that is the way the legislation is to be done mechanically, in our report I definitely feel, as do many others, that we must clarify that, for example, courts of law are excluded.

Senator Langlois: We must not forget the last sentence of the last paragraph of page 28:

The provision is sufficiently specific however, that it may result in a restriction of the scope of the professional practice of Members of the House of Commons and Senators. It is felt that such a restriction is necessary.

Starting from this, we have a conflict of interest among members of the legal profession on this committee and we should resign. I am ready to resign right now.

Senator Laird: It is only a philosophical proposition and until it is reduced to something enforceable it means nothing. I go along with the other senators on that point of view. We should comment on it unfavourably in our report; that is what we should do.

Senator Neiman: We disagree with the comments; we simply disagree.

Senator Laird: Exactly, and we convey that to the chairman of our rules committee.

Senator Langlois: How can you do that without being in conflict of interest as a lawyer? You cannot have it both ways.

Senator Laird: Believe me, I am in entire sympathy with both Senator Asselin and Senator Langlois; I go along with them. However, I am not worried, because this is only a philosophical observation in connection with a philosophical proposal, and nothing will be done until it is reduced to legislation. As I said before, the legislation is suggested through the rules of the Senate.

The Chairman: Our counsel is prepared to try to draft something if the committee will tell him what it has in mind.

Senator Laird: We are unhappy.

Mr. du Plessis: Would you define "happiness" for me?

Senator Laird: That may present a problem too. This is what we are here for, as I understand it, to study as a background these proposals and then say in our report that, for example, we do not go along with the philosophy in the third proposal; we state what we think should be the situation, we convey that to the chairman of our rules committee, he brings it before his committee and hopefully they will do what we recommend.

Mr. du Plessis: The other thing to do is to just leave it. It is only a recommendation that a provision of this kind be incorporated in the Rules of the Senate. If we just ignore that proposal, nothing will happen.

Senator Laird: You are quite right; we have a choice.

Senator McIlraith: I am not prepared to leave it with this language. It is quite offensive and can be reduced to an absurdity. The example I gave was very real. To think of taxpayers in such a tiny income bracket being denied the service to which they are entitled, even to make an inquiry of a civil servant concerning the house they live in,

is to realize that this is a monstrous piece of draftsmanship, and should be treated as such by us. Having done that, if we want to deal with something along this line in a proper context, we should do it quite separately from this proposal. We should not attempt merely to correct that language; it is too garbled and too much of it is wrong.

Senator Laird: We should set out our own point of view.

The Chairman: Is there any significance to the fact that the House of Commons committee made no mention of this?

Senator McIlraith: I expect they overlooked it, but I can no longer speak for them. I have some familiarity with their committees and I have looked at the evidence. One guess is as good as any other as to why they did not deal with it.

Senator Neiman: I believe the largest group of professionals affected by this rule would be the lawyers, but one can see where it may apply to, say, perhaps an architect who is appearing before some board on behalf of a client, or an engineer or other professional man.

Senator Smith (Colchester): Or an accountant.

Senator Neiman: If we wanted to we could discuss the formulation of a rule that would be satisfactory, which would meet some of the concerns of those who drafted this Green Paper, who have said that restriction is necessary, but at the same time meet our objections as well. We cannot leave it with that wording. I do not know if we can come up with a formula that would seem to protect the public from professionals acting unlawfully before government tribunals, but certainly this wording is quite wrong.

Senator Laird: We should say so in our report.

Senator Neiman: What I am trying to say is that perhaps we should attempt to draft an alternative proposal that would meet some of the concerns of those who feel that this type of restriction is necessary. We might produce a modified proposal.

Senator Greene: Predicating that some sort of restriction is necessary, as the last words on page 28 infer, surely we are into the whole realm of a canon of ethics for each profession represented in Parliament. You know, I do not think you can couch in any one bag the architects, the engineers, the accountants, the lawyers. Each profession probably needs a set of rules which they must abide by in their role as a parliamentarian. I doubt if you could put them all in one bag and say, "Here is a rule that applies equally to all of you."

Senator Neiman: With respect, Mr. Chairman, I think that all the professional groups or most professional groups that I am aware of do have their own code of ethics.

I think what we are trying to deal with is the members of the House of Commons or the Senate and whatever their ethical conduct must be as members; not representing clients, or whatever, in their professional capacity. I do not think we can throw it back to the individual professional organizations.

Senator McIlraith: Let me pose a question then, Senator Neiman. Take a senator who is a member of a trade union organization and receives pay as an officer of the trade union organization. He cannot, under this rule, go and discuss with the anti-inflation board the application, or

advocate a particular form of application of the anti-inflation guidelines in the labour field.

The Chairman: If he is paid a fee.

Senator McIlraith: He is paid a fee and he draws a salary and he has an indirect reward. He draws a salary from whatever the name of the union is. It seems to me it is absurd, because certainly that kind of discussion is exactly what I assume efficient government would wish their own officials to have when they are trying to develop proper regulations applicable to trade union negotiations.

Yet, he gets the indirect reward because he is on a salary, and always has been, from the union. It really is in his professional interest, you see, in that they have a procedure that is agreeable to the trade union movement.

Senator Neiman: Right. Certainly.

Senator McIlraith: The thing becomes quite defective.

Senator Langlois: May we have a look at the text of the disclosure proposal, where this proposal is implemented?

The Chairman: It is not there because it is to be incorporated in the Standing Orders, not in the legislation.

Senator Neiman: Page 48, the first paragraph.

Senator Laird: That is why our report on so many points is going to be fundamental.

The Chairman: It is in Appendix B on page 48. It is part of the Standing Orders.

Senator Langlois: Yes.

The Chairman: That corresponding provisions be incorporated in the rules of the Senate.

Shall we reserve our decision on this and take this one into further consideration at another meeting?

Senator Asselin: I would like to study this in more depth.

Senator Langlois: Are you sure you are going to have a quorum at the next meeting?

Senator Robichaud: Well, Mr. Chairman, at the next meeting—I think we all expressed ourselves—but what are we going to work on, because we must come to a conclusion on this.

Senator Asselin: Will Mr. du Plessis give us a report?

Mr. du Plessis: I would have to have some idea of what it is you would like to propose as an alternative in the form of a policy that I could draft. As it is now, I really have no idea what it is. I realize there is no unanimity on the recommendation that is contained in proposal 3, but I have no idea now just what it is that you might want to see as a suggested rule of the Senate on this subject.

Senator Asselin: Then, Mr. Chairman, I suggest that you form a group of senators, two or three, to try to find an alternative, based on our discussion this afternoon on this subject, and submit it at the next meeting.

The Chairman: If I appoint Senator Langlois, he says he is in a conflict of interest.

Senator Langlois: Sure I am.

Senator Neiman: But we accept that.

Senator Greene: He is disclosing.

Senator Robichaud: If you look around all the tables, Mr. Chairman, there is not one member of this committee now present who was not a member of a Bar.

Senator Langlois: That includes you, Mr. Chairman.

The Chairman: I admit that it includes me but I do not practice before government boards or tribunals or before the courts, so, I am impartial.

Senator McIlraith: It includes me, or any of us.

Senator Godfrey: I am in the same position. This deals with discussion among public servants. Public servants are constantly seeking to discuss matters of one nature or another.

The Chairman: Well, I am prepared to accept the recommendation of Senator Asselin and appoint three senators to meet with Mr. du Plessis and see if he can come up with something for us at the next meeting.

Senator Laird: Actually, Mr. Chairman, I think probably none of us had really thought through the implications of this until today. It is a little difficult to instruct Mr. du Plessis, except, as I said, we are not happy.

Now, how do you effectively include in your report something by way of an alternative unless you really arrive at a conclusion yourself? I must admit if anybody asked me to do it right at this moment, I would be lost for language.

Senator Asselin: I would be lost too.

Senator McIlraith: Why don't we leave this discussion on Proposal 3 stand and come back to it at a later date without taking any action now?

The Chairman: I think that each member of the committee should consider this. We will come back to it, whether at the next meeting or at a subsequent meeting. We are not going to finish this work in two meetings.

Senator Neiman: I think that is one of the more difficult proposals in there, so we might as well take some time.

The Chairman: Let us remember it is a sensitive proposal. There are feelings of senators, and members particularly, on appearing before departments and appearing before boards. There is public feeling on that.

Senator Asselin: And tribunals of government.

The Chairman: And governmental tribunals. So, we have to bear that in mind.

Were you going to say something, Senator Smith?

Senator Smith (Colchester): I was going to say it might be helpful if we knew with certainty what was intended to be covered by the use of the word "tribunal".

The Chairman: Mr. du Plessis is going to check that, in any event.

Senator Smith (Colchester): Yes, I see.

The Chairman: Shall we go on to one more proposal? It can cover two more, 4 and 5, or does the committee want to adjourn? I should like to finish this within a reasonable time, because I would not want it said that the House of Commons committee has made its report but that the

Senate is dragging its feet on the matter of conflict of interest. Obviously, we are not doing that because we did not have an opportunity of going ahead with this matter, when the House of Commons was meeting, owing to the fact that the matter was referred to us only at a much later date. Moreover, we were heavily involved with the cannabis legislation. So that cannot be said. Nevertheless, I think we should act as promptly as we can. There are some of these proposals which we could cover quite quickly. I am prepared to go on now, if that is your wish; otherwise we can adjourn.

Senator Langlois: Mr. Chairman, I don't mind dragging my feet, but I do mind dragging my conscience.

The Chairman: In that case I won't force you to drag your conscience any further. We will adjourn until next Tuesday at 2.30 p.m. Incidentally, I should point out that it was agreed by the steering committee that we meet every Tuesday at two-thirty.

The committee adjourned.

67-10-11
113



Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 26

TUESDAY, NOVEMBER 4, 1975

Third Proceedings on the Green Paper entitled:
“Members of Parliament and Conflict of Interest”

(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 10, 1975:

With leave of the Senate,

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Petten:

That the Green Paper entitled "Members of Parliament and Conflict of Interest", tabled in the Senate on Wednesday, 9th April, 1975, be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

November 4, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Buckwold, Croll, Godfrey, Laird, Langlois, McLraith and Smith (*Colchester*). (9)

Present but not of the Committee: The Honourable Senator Haig.

In attendance: Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued the examination of the Green Paper entitled "Members of Parliament and Conflict of Interest".

Mr. du Plessis replied to inquiries made by some members of the Committee at the last meeting concerning interpretations of Proposal 3 contained in Part IV under the heading "Guidelines and Proposals for Change". After discussion it was agreed that further study of Proposal 3 be deferred until the next meeting of the Committee at which time Mr. du Plessis will clarify additional definitions and provide interpretations.

At 4:20 p.m. the Committee adjourned until 2:30 p.m. on Tuesday, November 18, 1975.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, November 4, 1975

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 2.30 p.m. to consider the Green Paper entitled "Members of Parliament and Conflict of Interest."

Senator Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: We began examining the proposals in Part IV of the Green Paper entitled "Members of Parliament and Conflict of Interest". Before proceeding with proposal 4, I am going to ask Mr. du Plessis to answer certain questions which were raised at our first meeting. I asked him after the meeting to try to obtain the information called for by the senators. Would you proceed, Mr. Du Plessis?

Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel: One of the questions that was asked had to do with guideline 5. The question was: "What does this have to do with conflict of interest?" I think we had some difficulty understanding the real meaning behind guideline 5.

I have since been in touch with one of those connected with the preparation of the Green Paper—not one of the authors but someone who was involved with it. I am told that the concern of the authors of the Green Paper, as expressed in guideline 5, is that members of the public should not have to buy access to their member of Parliament.

The words "government officials" were used in guideline 5, but what was meant was that senators and members of the House of Commons should not be holding themselves out as lobbyists and a person should not get better treatment based on his ability to pay for any lobbying that might be carried out. In other words, the role of the members of Parliament should be one of helping constituents on an impartial basis.

This guideline is more concretely expressed in proposal No. 3, which recommends the adoption of the rule of procedure that we had some difficulty with at the last meeting of this committee.

Mr. Chairman, would you like me to go into proposal No. 3, at this point, or are there any questions on the explanation that I have given in regard to guideline 5?

Senator Smith: I would be intrigued to know whether this guideline is proposed as a result of something that people have observed to be happening, or whether it is just some sort of empty expression of what ought to be.

Mr. du Plessis: I think it is an expression of what ought to be. He did not go into any details of what was in their minds, or if there were any concrete cases in mind.

Senator Laird: To whom did you speak about this?

Mr. du Plessis: A person by the name of John Tait.

Senator Godfrey: Do I understand that that guideline was directed toward proposal 3? Has that some relevance?

Mr. du Plessis: Proposal 3 incorporates the objective of the guideline, as I understand it.

Senator Godfrey: Guideline 5?

Mr. du Plessis: That is right.

Senator Laird: I do not suppose this is a fair question but, by the way, do you happen to know Mr. Tait's background?

The Chairman: He is an official of the Privy Council.

Senator Laird: I know, but is he fundamentally an academic or has he had any practical experience?

Senator Croll: He has been there for some time.

Senator Laird: What is his background?

Mr. du Plessis: I think he was really just conveying to me the thought that was behind this. It was a very brief conversation that I had with him just today, so I have not really had a chance, on my own, to go into it any further.

Senator Buckwold: I really do not reconcile guideline 5 with proposal 3.

Senator Godfrey: No, not the way it is written, but that is the way he explained it.

Mr. du Plessis: There is the idea of advocacy in proposal 3.

Senator Buckwold: The guideline says:

The right of members of the public to equal access and impartial treatment by government officials should be respected at all times.

I am relating that to what it says a member of the other place or a senator should not do.

Senator Laird: Could I offer this explanation to Senator Buckwold? I think I know what he is driving at. It is that if a person wants information or action, who is not a member of Parliament, he may think he will get quicker action by paying somebody like a lawyer to get it for him.

Senator Godfrey: Who is a member of Parliament?

Senator Laird: That is right.

Senator Buckwold: I can see that, but I do not see this. Perhaps it just does not read that way.

The Chairman: Incidentally, Senator Laird, Mr. Tait is J. C. Tait of the Legislation and House Planning

Secretariat of the Privy Council Office. He appeared as a witness before the house committee on this Green Paper.

Senator Laird: Oh, he did, did he?

The Chairman: Yes. Mr. Finsten, our research adviser, just pointed that out to me. Oh, I am sorry. You should have a better memory than that, Senator Laird.

Senator Laird: I should?

The Chairman: Yes, he appeared as a witness before this committee at the meeting over which you presided when I was absent.

Senator Laird: Pardon me.

Senator Buckwold: Has there ever been a problem where members of Parliament, either senators or House of Commons members, have been paid for advocacy in front of their own tribunals?

Senator Croll: What do you mean by "their own tribunals"?

Senator Buckwold: Well, either promoting something in the House of Commons or in the Senate or somehow getting to a minister to have something happen. In other words, the fact that he has been paid for being a lobbyist.

The Chairman: There is no indication of that, Senator Buckwold. These guidelines are simply that. Part IV sets out the principles that should govern the conduct of members of Parliament. There is no suggestion that they are the result of actual cases or incidents.

We spent some time on proposal No. 3, and then last week we deferred consideration of it. But there was a question as to the meaning of "government boards or tribunals" and Mr. du Plessis has an explanation which I shall ask him to make.

Mr. du Plessis: I am informed that the expression, as used in the context of the suggested rule contained in proposal No. 3, is not meant to include courts of any kind. Courts are more independent than the quasi-judicial type of government board or tribunal that is meant to be referred to in this proposal.

Senator Asselin: Well, Mr. Chairman, in my opinion I think we should try to find a definition of "government boards or tribunals." If the expression does not include our courts, then I think we should put them in.

Mr. du Plessis: Senator Asselin, this committee is free to make whatever change it wishes to make in this suggested rule, if it intends to propose that it be adopted as a rule of the Senate.

Senator Laird: Mr. Chairman, I have been wondering how much time this committee should spend on dealing with guidelines and proposals, in view of the fact that what is really going to count is what is in the legislation subsequently passed. Of course, I admit right off the bat that proposal No. 3 must be dealt with by this committee for the simple reason that it does suggest a Senate rule, and, if you look a page 48, Appendix B, you will see that there is a proposed rule. No. 1 on page 48 reads as follows:

A Member shall not advocate any matter or cause related to his personal, private or professional interests among Members or Senators, or among public

servants, or before any Government boards or tribunals, for a fee or reward direct or indirect.

Of course, we have to spend some time on proposal No. 3 so that we can then in our report give some direction as to our thinking to the rules committee headed by Senator Molson. That would just open up the discussion. But what worries me is those words "direct or indirect". Those are just wide open. It seems to me you could hook in almost anybody on anything with those words.

Senator Godfrey: Well, there are more ways than one of skinning a cat. I can give you a specific instance, if you want, of an indirect reward. I can remember 25 years ago that, when dealing with aldermen in the city of Toronto, if developers wanted to get a zoning change, which could result in an increase in value of hundreds of thousands of dollars, they could get the support of a lawyer on the property committee by giving him a little business which was not related to that particular matter at all, and maybe not until after they got what they wanted. But the developers would then retain the lawyers to search some title on some property which they would not even bother to go ahead with, or they would have their own lawyers search it as well to make sure it was well done, but they would use the aldermen so that it could not be directly linked up. That was a favourite device on which aldermen got paid off.

Senator Croll: Are you sure that was 25 years ago?

Senator Godfrey: No, I am not, but I was not going to libel any present members so I used the expression "25 years ago"; but that is just one illustration.

Senator Laird: Well, that is a clear case, but the word "indirect" still worries me.

Senator Godfrey: There is another allegation in the paper just this morning. You may have seen it.

Senator Laird: Yes.

Senator Buckwold: In my opinion, you have to use the words "direct or indirect," because a variety of situations must be covered.

The Chairman: I do not see how you can avoid the use of "direct or indirect."

Senator McIlraith: Mr. Chairman, what are the indirect rewards related to the professional interests of a lawyer? In other words, if they start taxing the estates at \$10,000, then there are going to be more succession duties collected and more work for lawyers in the province. Is that an indirect reward? You see how absurd the thing becomes when you use imprecise language like that used in the proposed rule before us. It seems to me we need something a little more particular to define what we are getting at.

Senator Godfrey: Are you suggesting that because any piece of legislation is likely to produce more legal work in the future for lawyers that is an indirect reward?

Senator McIlraith: Yes, that is exactly what the rule says.

Senator Godfrey: No, it does not say that.

Senator McIlraith: That is what we do not want to say, but that is what it says.

Senator Godfrey: It does not say that.

Senator McIlraith: We want to say that we want to get at a senator for improperly using his office or his appointment to benefit himself in any matter for pay or reward.

Senator Croll: Mr. Chairman, general legislation affects doctors, lawyers and anyone else. That is not what was intended. There are indirect benefits that are normally known to lawyers only too well.

Senator Buckwold: All legislation affects somebody somehow, even income tax reductions.

Senator Godfrey: This anti-inflation legislation is helping all the lawyers, as did the Foreign Investment Review Act. Every act is going to suggest more legal work, but nobody ever suggested that it comes under that.

Senator McIlraith: That is the point; some of them do suggest these various things.

Senator Buckwold: Why not eliminate all lawyers from the legislative assemblies? I would be a lot simpler.

Senator McIlraith: That is what the rule would do as it is drafted, and that is not what was intended.

Senator Godfrey: No court would ever interpret it that way, in my humble opinion.

Senator Buckwold: I am a businessman, and if someone suggested that a tariff change might make a slight difference on some product I was involved in, would that be an indirect benefit?

Senator McIlraith: Yes.

Senator Buckwold: I do not take it as that.

Senator Godfrey: If you were the president and owner of Massey-Ferguson and there was a tariff change on agricultural equipment, I would suggest that under those circumstances you would declare your interest.

Senator Buckwold: Yes, but I am talking about a casual relationship.

Senator Smith: Mr. Chairman, I assume that the term "government boards and tribunals" refers only to federal boards and tribunals. If I may, Mr. Chairman, I should like to refer, for example, to the Income Tax Review Board. I have never appeared before that board myself, but from time to time some of my professional partners have. Is that an infraction of this proposed rule?

Senator Laird: No, and I will tell you why it is not. The Tax Review Board is a court of record. A lot of people do not know that, but it is.

Senator Smith: But it is not called that; it says "board" here.

Senator Laird: I do not care about the nomenclature. The fact is, it is a court of record, Mr. du Plessis' information indicates that courts are excluded, and since it is a court it is excluded.

Senator Smith: But we want to make sure; that is the point, I think.

Senator Croll: You should not appear yourself.

Senator Smith: I never have.

Senator Croll: We always avoid it. It is a court, however; it is an appeal court.

Senator Godfrey: I would not think that a member of Parliament would be criticized for appearing before the Tax Review Board. I do consider it a court.

Senator Smith: It is a matter of nomenclature; it says "board" here.

The Chairman: Let us take another case.

A Member (Senator) shall not advocate any matter or cause related to his personal, private or professional interests among Members or Senators, or among public servants, or before any Government boards or tribunals...

Bill C-73, which is going to be before us shortly, sets up the anti-inflation board. That is not a court. This means that a member of Parliament or senator may not appear before the Anti-Inflation Board on behalf of a client.

Senator Croll: That is right.

Senator Smith: I assume that applies to his partners.

Senator Godfrey: No.

Senator McIlraith: Indirectly, yes.

The Chairman: I would think so myself, yes. I am drawing a distinction between the Anti-Inflation Board and the Tax Review Board.

Senator Croll: That is not the distinction. Boards are boards. Is the Tax Review Board a court or is it a board? If it is a court, it is out. If it is a board, it is a different thing entirely. I would like to have a definition on that. A court is a court. I have always looked upon the Tax Appeal or Review Board as a court. Now, if the rest of you look upon it as a board rather than a court, then it is included in this.

Senator Laird: I certainly look on it as a court.

Senator Croll: I always did, too.

Senator Laird: I would have no compunction in appearing for, let us say, John Godfrey if he became involved in a tax case before the Tax Review Board.

Senator Godfrey: I may be doing more talking than I should, but I have to leave early and that is why I want to get my views across.

I want to challenge a statement that the chairman made just now. In my view, proposal 3 is as clear as daylight. It says:

A Member (Senator) shall not advocate any matter or cause...

It does not say that a partner of a member or senator shall not do this. Members of my firm are appearing before boards all the time. I do not have anything to do with it.

Senator Buckwold: Do you have any financial interest in your company?

Senator Godfrey: I certainly have; but I am talking about this proposal.

Senator Croll: You have a direct interest, then.

Senator Godfrey: But as long as I am not doing it, what does it matter? I am asking you to read the wording here. Whether it is correctly worded or not, I do not know. However, the wording does not include a partner.

Senator Buckwold: You would have to keep quiet during any discussion of that particular subject, because otherwise you would be advocating it.

Senator Laird: The words "direct or indirect", as Senator Asselin has pointed out, catch you.

The Chairman: I think so too. I think Senator Godfrey is wrong in his interpretation.

By the way, on the Tax Review Board, I am not sure that it is a court. You said, Senator Laird, that it is a court of record; but one of the tests of whether or not a body is a court is whether the members of the board are judges. The members of the Tax Review Board are not judges.

Senator Laird: No. Another test, of course, is, however, whether the cases are reported, and whether they constitute a body of jurisprudence.

Senator Asselin: What about the Immigration Appeal Board?

Senator Croll: They are certainly not judges; they are laymen.

The Chairman: They are laymen, yes.

Senator Croll: It is not a court.

The Chairman: I am going to ask Mr. du Plessis to look further into the meaning of the expression "government boards". He has clarified the meaning of "tribunal", but I am now asking him to make a note of Senator Asselin's suggestion that perhaps we might be more specific in rewording the proposed rule.

Senator Croll: How did you clarify the tribunal part, Mr. du Plessis?

Mr. du Plessis: I simply said that from the information I had obtained it was not intended that the expression "government boards or tribunals" should include courts of any kind.

Senator McIlraith: Could I ask for some further information, Mr. Chairman? In dealing with the Tax Review Board, assuming for the moment that it is a court, I would point out that the draftsmanship says:

A Member (Senator) shall not advocate any matter or cause related to his personal, private or professional interests among Members or Senators, or among public servants, or before any Government boards or tribunals...

"Public servants", in that sense, would include the staff of the Tax Review Board, although it is a court, so that you would have the anomalous position, in the light of that draftsmanship, that a senator could appear before the board and argue his case, but he could not make any representation to the staff of the board down the line.

The Chairman: Any more than he could to the Deputy Minister of National Revenue.

Senator McIlraith: That is right. He could do the mere advocacy of the case before the board, but he could not speak to the appropriate officials down the line.

Senator Godfrey: Would there be any reason why he would talk to the officials, except perhaps to set a date?

Senator McIlraith: Yes. He would speak to them to have the case set up in a certain way, for example.

Senator Godfrey: But you could get a junior to do that. There is no official that has any influence on anything except on setting the date.

Senator McIlraith: Oh yes; oh yes.

Senator Laird: I am sorry, Senator McIlraith, but after umpteen years' experience in that particular tribunal I would say that you are wasting your time to speak to the registrar or the clerk, or anybody, other than, as Senator Godfrey suggests, for the purpose of setting the date.

Senator McIlraith: Well, in view of the way they are preparing those summaries of cases that come before them, and in view of the way they seem to be extending their technique of handling them, I do not know if you are right about that.

Senator Croll: My experience is that it is about as useful to talk to those people as it is to talk to the clerk of a Supreme Court judge. He says good morning to you, and that is it. I do not think, Senator McIlraith, that that will bother you very much, although we used to go up and see them now and then to find out how to handle certain things.

Senator McIlraith: You see, you have this problem arising now in the Federal Court. The staff of that court, if you look at its structure, is administrative, and they do a lot of the work connected with preparing and summarizing cases, and so on. You are therefore not free to speak to them. If you are arguing a routine case in the Federal Court you cannot speak to the staff, but you can go before the court and argue your case. The staff assemble everything. The technique is rather different from that in the Supreme Court and the provincial Supreme Court. It is different altogether.

Senator Laird: Well, I have had some experience in the Federal Court, which was formerly the Exchequer Court, and also before the Tax Review Board, and I must say, with all due respect, that there is nothing that those staff members could do to influence the member, that I know of.

Senator McIlraith: Not in the Exchequer Court. The difference is in the changes that have been made in the old Exchequer Court, Supreme Court of Canada, and Supreme Court of Ontario practice.

Senator Croll: Is it that much different?

Senator McIlraith: Yes, it is.

The Chairman: I have not appeared before them very much, but are you saying you would go to one of the officials of the court to advocate a matter or cause?

Senator McIlraith: I am saying that you might be advocating a cause by doing so; you might be advocating if you did that.

Senator Croll: How could such a person help you, except by whispering in the judge's ear?

Senator McIlraith: He helps you by presenting the point in the document that goes to the judge before the trial. It is his document, not yours.

Senator Haig: In other words, he makes a precis of it.

Senator McIlraith: Yes. It is a little different from the old practice that we were originally trained in.

Senator Laird: Might I suggest, Mr. Chairman, that Mr. du Plessis check into the suggestion made by Senator McIlraith that some sort of precis is prepared by a member of the staff for a member of the Tax Review Board, and whether or not it contains any opinions on the suggested decision? I would be amazed if it did.

The Chairman: I would certainly be amazed if that happened.

Senator Godfrey: And whether there is an opportunity for lawyers to talk to that member of the staff or to influence him.

Senator Croll: It stands to reason, because a judge, as I know the situation to be, says to the clerk as they do in the Supreme Court, "Will you present the brief on this?" Then all he has to do is to present a couple of biased ones and he doesn't have a job any longer, so he does his best to present it in the best way he knows how because he does not know what the judge's thinking is on it. I do not think that can ever happen.

Senator McIlraith: It is not the adjudication I am concerned with; it is the advocacy. One cannot advocate any matter related to one's professional interests among public servants. One is entitled to go and practise in the court or to argue one's case in the court. So it does not make sense to give one the right to practise a case in court and at the same time not to be able to discuss it in certain of these newer courts with the appropriate public servant. That is why the draftsmanship here is not sufficiently precise. Let me make it clear that I quite agree with what is sought to be done here. I am not at all at issue with what is sought to be done, but I am at issue with the language being used to do it.

Mr. du Plessis: If they intend the Tax Review Board to be included in the expression "government boards or tribunals", then they are being consistent with their intention, are they not? Because if it is prohibited for any senator to advocate any matter or cause related to personal, private or professional interests among public servants, and if they are including the Tax Review Board within the meaning of "government boards and tribunals", then, he is excluded from both.

Senator Smith: It is pretty sweeping. You know, you do not start a row with the Income Tax Department by going in front of this board; you start with an official at the local level and he is a public servant, and that is precluded.

The Chairman: Yes, that is prohibited. That is the intent.

Senator Godfrey: In other words, practising law before a government official for a fee.

The Chairman: That is right.

Senator Smith: I understand that. I should also like to point out that I suppose that what is prohibited to a senator is also prohibited to his partners, by necessary implication.

The Chairman: That is certainly my impression.

Senator Smith: And that is why I am taking a hard look at this because my partners are dealing with the income tax people every day.

Senator Croll: That is true, senator. That is one of the great disadvantages. I do not know if it has been observed,

as you suggested, but it certainly was intended. In the past, of course, what has happened is that 99 per cent of the lawyers who came into the Senate simply walked out of their firms; they never practised afterwards. So this situation, for all practical purposes, very rarely arose. There may have been some instances.

Senator Smith: It surely arises now.

Senator Godfrey: Well, I would like Mr. du Plessis to check back on whether that was intended or not because I certainly do not read that into it. I have made a rule myself that I will not appear before such bodies. I said to the members of my firm that I had not come up here to practise law.

Senator Smith: I do not propose to do this sort of thing either, but am I going to go back and say to my firm, "Gentlemen, since I have been elevated to this august assembly in which I have suddenly been placed, you fellows cannot practice income tax law any more."?

Senator Godfrey: There is another solution. I also have an agreement with my partners that if they happen to get any government fee from any crown agency or anything of that nature, then I am excluded from it.

Senator Asselin: It is not easy to do that, my friend.

The Chairman: Another senator told me some time ago that when his partner appears before a government department on behalf of a client, he does not share in the fee for that business.

Senator Smith: That is relatively easy where you have a case of some consequence and where you can segregate the charges that are made for it and the money that is received for it. But if you are going to include calling up the local income tax officials and saying, "Look here, you have assessed my client, John Brown, for \$75 and it should only be \$40!" how are you going to deal with that situation?

Senator Godfrey: Don't you think that we should find out what the intent was and whether in fact it was intended to include it?

Senator Croll: That was the intent.

Senator Godfrey: To include partners in this?

Senator Croll: Yes. When you talk about coming here and saying, "I won't practise before such-and-such a body," for 20 years we have done that. We have said that we would not share and we would not practise and so, in most instances, we have got out of it. It was unwritten, but that is what we did. Now it is becoming a little more precise and so we have to consider the situation in a practical way. In the case put forward by Senator Smith, that a client is charge \$75 or \$100, then you just do not share in that. It is easily segregated in an office. Each client pays his bill and these things are easily separated.

Senator Godfrey: I should like to ask Mr. du Plessis whether in fact he has checked with somebody as to whether this includes partners.

Mr. du Plessis: I have not gone into it to that extent.

Senator Godfrey: Well, I have read the paragraph below and I would have made it plain. So I would like to ask if Mr. du Plessis would ask whoever is concerned in this—Mr. Tait—whether this is what is intended. I seem to be in a minority here in what seems to me to be plain language,

and so I would like to find out what exactly the situation is.

Senator Smith: I just want to make it clear that I have no desire to raise my income from the practice of law by virtue of the fact that I have been fortunate or unfortunate enough to find myself here. However, when making rules for the conduct of senators, members of the other place or anyone else, they must be made in a practical sense so that they can be honestly and fairly observed without extraordinary inconvenience. I simply do not see how we can make this rule apply to partners in the minor type of cases to which I refer. Now, in the case of a really full-fledged appeal case before the Tax Review Board, I can see how it could be conveniently decided to segregate that, but that is not something that happens to even the largest firms every day of the week.

Senator Laird: Senator Smith's observation raises, again, the fundamental point which I endeavoured to make at the beginning of our sessions when we resumed after the recess. That was that it really boils down to whether we intend to go along with rules that are so rigid that those who are supposed to be running this country do not know anything really from personal experience about the subject with which they are dealing. In other words, when it comes, for instance, to income tax appeals, are the legislators going to consist of people such as, for example, academics—and I can speak rather freely of academics, having more than the usual amount of formal education myself—and are we going to let them decide the course of conduct that is to be legislated? This point raised by Senator Smith is extremely vital and, in my opinion, that is why proposal 3 is of frightfully fundamental concern here, because it, in turn, requests our Standing Committee on Standing Rules and Orders to reduce it to something definite. I, of course, feel that this is very dangerous and, really, that the English system is right, in which each situation is left to consideration on its own merits.

Senator Croll: Well, this cannot be left to the Rules Committee; it is for us to decide what is to be done. However, Senator Laird, you continually say that the English leave it to each member. I have a report of the British select committee with respect to members; interests, which I have read and re-read and your statement is not quite true.

Senator Laird: It is not 100 per cent the case; I am over-simplifying, actually.

Senator Godfrey: I have a resolution passed in 1695 by the British House of Commons, reading as follows:

the offer of money, or other advantage, to a Member of Parliament for the promoting of any matter whatsoever depending or to be transacted in Parliament is a high crime and misdemeanour

In other words, they are saying that a member cannot accept the fee for advocating legislation before Parliament. I don't think anyone can argue with that. What I like for particularity is the very argument we are having today: should it apply to partners? I do not know and I want some guidelines. I can live with it, but I do want to know.

Senator Croll: I don't know whether you were born in 1695, when that resolution was presented, but things have changed since then! Lawyers are trained in a different manner today; partnerships are made up in a different way today. There were seldom partnerships in the old days and the lawyer was brought into the Senate without that con-

cern. It brings up entirely new problems, to which we must apply common sense. What is that common sense which we must apply to it? Everyone agrees that the senator stays away from these things himself; no one argues that point. Now, what is the indirect portion he has as a member of a partnership? If he profits from that partnership, I should think he is in difficulty. On the other hand, he might say, "Although we are partners, nothing the partnership does for the government in any way affects me at all." That has been the position that members of the Senate who are lawyers have taken from time to time when they have been in some difficulty about this very point. That has some appeal and can make some sense if we just follow it slowly, argue it out and think it out. After all, Senator Smith has a point; he says, "I came here and I am prepared to spend all my time here. If I have some time left when I can practise law on the week-end with estates, or half a dozen other things, I understand that it does not bother you, but there are some matters in which my firm is interested and I cannot handicap my firm." On the other hand, we were right to say to him, "That is perfectly all right, but you must not profit from it." To that extent we should work out some rule, if that is the consensus here. In any event, it is my view.

Senator Laird: And we must work out some practical rule and, as you said, apply common sense.

Senator McIlraith: Mr. Chairman, I would like to hear some views of members of the committee with respect to Senator Croll's remarks. I myself am not concerned, because I am not a partner in a law firm.

The Chairman: Nor is the chairman of this committee.

Senator McIlraith: But here is a practical problem having to do with the working of this rule. Reference was made to estate practice. Take, for instance, a law firm which is sending through a hundred applications in a year. They are advocating in every case and they have to advocate certain things on the tax clearance for the estate, and the estate cannot be cleared until the final income tax clearance is received. Now, if a senator is a partner of that law firm he will receive an indirect reward by virtue of being a partner for his men back home in Toronto, or Halifax, as the case may be, having made the usual application in some quite small estate, because there is no lower limit, or one of only \$1,000 or \$2,000. Surely, that is not what was intended here at all?

Senator Croll: We all agree with you.

Senator Laird: You are quite right.

Senator McIlraith: So, to return to the original discussion, we must consider the drafting of this from several different points of view so as to arrive at precise language and decide what we do need. In my opinion, that is the criterion, rather than to approach it as is done here, by endeavouring to make a blanket exclusion.

Senator Croll: I agree with what you say, but the minute we start writing it in, we miss 20 other objections. I agree with your point with respect to the estates. There is sometimes a question of tax, but the minute we cover that point we will find something else.

Senator Laird: That is the trouble with rigid rules.

Senator Godfrey: But we do not really have to decide whether it is ethically right or wrong?

Senator McIlraith: Surely, the question I posed is ethically right, but it is related to professional interest and an indirect reward.

Senator Croll: Gentlemen, you must remember one thing: we must be very, very careful about this, because we will be under fire for some time and it will be heavy. Whether we deserve it or not is another matter and I don't know anything about the particulars, but the public is not going to take that view of it. So when we do this defining we must be very, very careful.

Senator Laird: Agreed.

Senator Croll: Around this table we have a pretty good think tank and we must do a lot of thinking about it, because the other people did no thinking about it at all. I saw their report and spoke with them and they really have not got anything on it. So, whatever value comes out of it must come from here and we must be very, very careful.

Senator Buckwold: Mr. Chairman, as the only non-lawyer here, I suppose it is a good idea to have someone present to express the common point of view. I would agree that the more we try to make exceptions, the more difficult it will be. We need a general rule. Surely, it must be possible to relate it to the specific remuneration or reward of the member or senator. It seems to me that it would not be that difficult. I think, Senator Smith, that even in your law firm it is possible to have a fee whereby if a reward is given or a fee is paid to your firm for legal services involving appearing before a government board, you personally would not benefit. Without going into the exception side, it might be easier to clarify the person or involvement financially of the partner or individual concerned.

Senator Smith: I should like to respond by saying that, as a matter of personal experience, from 1970 until 1974, when I ceased to be a member of the House of Assembly of Nova Scotia, we tried very carefully to work out that kind of thing. Although we managed to do it in such a way that we thought we could defend ourselves before any reasonable tribunal or person—and we were willing to go to the people with it—we were never able to reach a stage where I could participate even as a salaried member of the firm instead of a partner. Let me put it in a more general way. The firm could not do any business with any provincial government body—tribunal, board or public utility—without infringing against the rule that no member of the House of Assembly should have an indirect benefit from the result of his association with people who were doing business before such a board. It could not be worked out. For instance, we started out by deciding on a salary. We thought it would ensure that I could not be said to be participating in any reward from the activities of the firm before such an innocuous board as the Workmen's Compensation Board or the Board of Commissioners of Public Utilities. But if we really examined it, where was the money coming from? It was coming from that kind of work. There was no way that we could find to devise a system which would ensure that I did not derive some benefit because one of my partners advocated a motor transport case before the Motor Carrier Board.

Senator Buckwold: Senator Smith, if you had a fixed salary, it was not dependent on whether the firm appeared before that board. Whether the firm appeared 10 times, once or not at all, your salary would be the same. I would

be prepared to argue that your remuneration was not based on any kind of reward given to your partners.

Senator Smith: That was the reason which led to the decision to try to do it that way; but when the year was over we found ourselves in no better position.

Senator Buckwold: I would say that if you were on a fixed income, no one could accuse you either directly or indirectly.

The Chairman: You are saying, Senator Smith, that you have already been subject to this rule.

Senator Smith: I have been through it for a number of years, and I was never satisfied that it was possible for any member of my firm to appear before a public body, or to see a public servant about a client's interest, and, at the same time, avoid infringing upon the strictest interpretation of that rule, if that was the rule which I had to follow. The rule of our House of Assembly is the one you quoted, that no one shall receive any fee for advocating anything before the House or a committee of the house. I have no problem with that; but we tried to go further.

Senator Croll: What did you do when you were premier?

Senator Smith: I was not in the firm then; I had left it.

Senator Croll: How long was it before you went back to the firm?

Senator Smith: I was laid up for six months. It was almost eight or nine months after I ceased being premier before I could do any work. I then went back on a modest salary to see whether or not I could do any work, and after three or four months it became apparent that I was fortunate enough to be able to continue. That is when we decided on a salary.

Senator Croll: It is a little different. I went through the same procedure from 1930 to 1934 as a provincial cabinet minister. They did not handle anything at all that had to do with the Province of Ontario. I went to see Clark. I do not know whether you remember Mr. Clark, the then Deputy Minister of Finance. There was no better in the history of this country. As a matter of fact, Sinclair and I went to see him. We were friends, and we came down here. We were both practising a little. There was no salary attached. I was a partner in a firm and so was he. He said "Well, if you are doing anything to do with government, you get no part of it at all. So instruct your auditor that he must ensure that you do not share in the money that comes to that partnership." And that was it. I had no difficulty. That is the way we lived for a time, and we did not share. Then, after a while, I did not practise; but that is another matter.

Senator Smith: I would like to emphasize that it is a very difficult situation. While I was a member of the government of Nova Scotia, I was not a member of the firm, nor was I on salary. I received nothing from the firm, and had nothing to do with it. When I ceased to be a member of the government and, in fact, became a member of the opposition, I returned to the firm. They were kind enough to give me an opportunity to return. Nevertheless we still had the same problem, even in opposition.

The Chairman: I am sure this is what is intended by proposal 3. The public would look askance at a senator or member doing indirectly through his partner what he cannot do directly. That is my reasoning.

Senator Smith: I would be inclined to agree. We have to be careful how we define it.

Senator McIlraith: They cannot touch real estate transactions. If they purchase a house, they immediately come up against the Central Mortgage and Housing Corporation. It becomes a very unreal rule. It is very wide and goes far beyond any action of a member or senator.

The Chairman: Central Mortgage and Housing Corporation is not a broad—but it is a public servant.

Senator Laird: Senator McIlraith is right, if we pursue this to its conclusion. After all, some member of the firm might have dealings with CMHC and take a certain course of action, purely on his own; yet if Senator McIlraith is a partner, the public might say, "It is because of him that his firm was able to get favourable consideration from CMHC to buy this." Senator McIlraith says it is unreal. I say it is ridiculous!

The Chairman: I think that the feeling lying, in part, behind this proposal is that if Senator Smith goes to see the income tax inspector in Truro on behalf of a client, or if his partner does, that would be using Senator Smith's influence as a senator. I think that is behind some of the thinking.

Senator Langlois: But in doing that, Mr. Chairman, you want Senator Smith to be responsible not only for his own actions but also for those of his partners. I would not even take that responsibility myself. I am ready to accept responsibility for my own actions, but not for the actions of third parties.

Senator Godfrey: If I was ever foolish enough to go to the income tax people, I, as a senator, would not expect to be treated very well, because I would have two strikes against me. They would be wondering why I was there.

Senator Langlois: You would be wasting your time.

Senator Godfrey: They would resent my being there. But if it were one of my junior partners, they would not even know he was associated with me; it would never cross their minds.

The Chairman: I was not expressing my own views, Senator Godfrey; I was simply saying that this is the thinking of some people, and it has been expressed.

I suggest we leave this once again and have Mr. du Plessis attempt to get further information on the effect of this proposal on the partners of members and senators, as well as further information on some of the other points that were raised.

Senator Asselin: Mr. Chairman, since it is obvious from the discussion today that there is dissatisfaction with this proposal, would it not be advisable to have a subcommittee appointed to draft a new proposal? No one, it would appear from the discussion, is prepared to accept the proposal as presently drafted—except perhaps one or two. In my opinion, we should try to draft a new proposal along the lines we have discussed this afternoon.

The Chairman: Is there a consensus of opinion that we would replace this proposal by a new proposal, an amended proposal?

Senator Laird: I think we have to, Mr. Chairman, for the reasons I stated at the beginning. We have to recommend, on the basis of this proposal, what the Senate Committee

on Standing Rules and Orders is going to be asked by us to do. While it is true that the Committee on Standing Rules and Orders will have to frame it, we will be expected, I take it, to advise that committee as to our feelings on the matter.

The Chairman: Yes, certainly. The Rules Committee will not act on its own. It will have to be under our advice.

Senator Laird: That is right.

Senator Croll: Mr. Chairman, I stand solid behind the concept of the proposal, direct or indirect. If we can find some definition, or some thinking, that softens the proposal in such a way that the concept remains without undue hardship, I am prepared to look at it, as are all the other members of the committee, but we cannot get away from the principle.

It is one thing not to touch it at all, but once we get into it, we have to consider that the principle is paramount, and any deviation from that is, in my opinion, deadly.

The Chairman: I agree with you. I was going to suggest that before selecting a subcommittee to do some drafting, Mr. du Plessis be given an opportunity to get answers to some of the questions that have been raised, following which we shall then be in a position to do some redrafting.

Senator Croll: Where will he get the answers?

Mr. du Plessis: Perhaps some of the answers will be found in the material that was distributed to all members of the committee. It might also be possible to obtain some leads from Mr. Tait as to who could best advise us on these matters or on the thinking involved. Of course, it is the committee that now has to do the basic thinking.

Senator Croll: Yes, but there are some very senior public servants, good people, who have been around a long time and to whom you could turn for advice on this. You could perhaps get some of their views on the matter and what their experiences have been.

Mr. du Plessis: I will certainly look into that. It may take some time to make these inquiries.

Senator Laird: This is so important an area, Mr. Chairman, that I do not think we should worry about the time element.

The Chairman: The senior official, as far as I can determine, who was directly concerned with this was Gerard Bertrand, Assistant Secretary to the Cabinet.

Mr. du Plessis: He was the first one I called, by the way, with regard to the information I was seeking for this meeting. He was the one who referred me to Mr. Tait.

Senator Langlois: That would be going back to the same source. I do not think there would be anything strikingly different to be found.

The Chairman: Except to determine the meaning, the intent.

Senator Langlois: The language used is very loose. What is a "public servant"?

The Chairman: Well, the committee went over that at some length prior to your arrival, Senator Langlois.

Senator Langlois: What is a "board"? These things have to be defined.

The Chairman: We dealt with government boards.

Senator Croll: Is the Tax Review Board a board or a court?

Senator Langlois: To my mind, it is a tribunal.

Senator Croll: What is a tribunal?

The Chairman: Senator Langlois, we were told by Mr. du Plessis, whom I asked to inquire into this, that the term "tribunal" does not include a court.

As to the Tax Review Board, some senators feel it is a court because it is a court of record. I suggested that a court is headed by a judge, and the members of that board are not judges, but Mr. du Plessis was going to check into that.

As far as other government boards are concerned, it is quite clear that the intent is that no member or senator shall advocate his professional interest before a government board.

Senator Langlois: But what is meant by a "government board"?

The Chairman: Regulatory bodies.

Senator Langlois: Administrative boards?

The Chairman: Yes, administrative boards.

Senator Langlois: It should be stated clearly. I do not like this loose language, this loose wording.

Senator Croll: It may not be administrative; it may be something beyond administrative. A board is a board, whether administrative, regulatory—

Senator Langlois: There is no such beast as a government board. They are not appointed by government. Government boards exist through legislation. They exist not through governmental authority, but through parliamentary authority.

Senator Croll: Perhaps you are correct in the strict sense, in that these boards are appointed under some act of Parliament, but we refer to them as government boards.

Senator McIlraith: The term "tribunal" is wide enough to include a court, any court. All the courts are tribunals.

Senator Laird: You are right.

Senator McIlraith: The language of the proposal is so offensive that it is difficult to discuss it reasonably.

Senator Langlois: The term "public servant" will have to be defined. The mayor of Ottawa is a public servant, and members of Parliament or senators could not go before the mayor of Ottawa.

The Chairman: The intent is federal public servants.

Senator Langlois: But it will have to be defined as such.

Senator Croll: Well, we are dealing with the federal sector.

Senator Buckwold: Mr. Chairman, getting back to the benefits, the rewards, I just scribbled four words at the end of this that we might try on for size—and, again, I am not a lawyer. Without reading the whole thing, I would suggest that after, "A Member shall not advocate" and so

on, we say "for a fee or reward, direct or indirect, *That benefits the member.*"

Senator Croll: That is implied.

Senator Buckwold: That means it is the member who is involved rather than anybody else.

The Chairman: You are coming back to the suggestion that the member dissociate himself in a pecuniary way from any work of his office.

Senator Buckwold: That is right. I cannot see us precluding a legal or accounting firm as long as we make sure that the member is not benefiting from the reward or the fee. I think this should be satisfactory. I just suggest those four words as a means of starting a discussion that might result eventually in a relatively simple definition. As long as the senator or member of the House of Commons does not benefit, I do not see that there should be a conflict of interest.

Mr. du Plessis: On the face of it that meaning is, I think, conveyed in the words "a Member (Senator)". There is no mention here of partners. Even if the intent was to include partners, it is certainly not expressed here.

Senator Langlois: "Indirect" would include partners.

Mr. du Plessis: That is only in regard to the idea of benefits, not in regard to the legal subject of this sentence, which is that a member or a senator "shall not advocate." In that case we are perhaps getting into the question of undue influence. We have been talking about benefits, both direct and indirect. Perhaps one of the purposes of the rule is to get at undue influence.

Senator Buckwold: If no fee were paid, if a member of a legal firm were doing something gratuitously for a non-profit, charitable organization, he would not be precluded from advocating that. I think the real impact is the "fee or reward, direct or indirect." I repeat, I am only concerned with precluding benefits to the member. It should not preclude other partners in the law firm, or whatever it may be; there are dozens of other examples, such as architects and accountants.

Senator Laird: The more I think of Senator Buckwold's suggestion the more practical I think it is. You will recall that a few minutes ago he said as a non-lawyer he would find it unobjectionable if a member of a law firm, to take that example, were put on a fixed salary, which would not vary. He would favour evolving some suitable language where a fee or reward, direct or indirect, is involved, and by adding words such as "based on the results of such advocacy" we might have something that would enable his suggestion to make sense. It is a matter of semantics. If a member of a law firm is put on a fixed salary, which is absolutely unconditional on results obtained because he is a member of the firm, it seems that could be a possible solution.

Senator Buckwold: Or if the fee can be compartmentalized for that particular action. You do not have to be on a fixed salary, but from the government point of view you do not get any reward. All I was trying to do by suggesting those four words was to bring it back to the member, and in doing so emphasize that it did not preclude those who may be connected with him professionally, as long as the member did not benefit in any way whatsoever.

Senator Laird: I repeat, what we are trying to eliminate is benefit to the member resulting directly from the advocacy that he makes for the appointments.

Senator Buckwold: And preclude in direct benefit to the member as well.

Senator Laird: That is it.

Senator Buckwold: The indirect aspect is important. I do not think we should get ourselves so involved with trying to get exceptions. We should not lose sight of the fact that we want members not to benefit from their advocacy.

The Chairman: If I may interrupt you, Senator Buckwold, this argument has centred on appearing before a government board or tribunal, or before a public servant. There is also the prohibition about advocacy between members or senators. Would you say it would be all right for Senator Laird's firm to appear before a House of Commons committee or a Senate committee on a bill before the Senate or the house as long as Senator Laird himself did not benefit personally?

Senator Buckwold: I do not see why not, but—

The Chairman: That would look very bad.

Senator Croll: No, you could not do that.

Senator Buckwold: You did not let me finish.

The Chairman: You have to be logical.

Senator Buckwold: I did not finish. I think out of good common sense he would never do it.

Senator Haig: He would not be asked.

The Chairman: He would be asked.

Senator Smith: I think Mr. du Plessis has pointed out something that perhaps we have strayed away from. When I started talking about partners, as I understood his comment he was drawing our attention to the fact that this phraseology, so far as the prohibited person is concerned, is narrowly confined to a member of the House of Commons or a member of the Senate. I think he probably intended to suggest that the person who drafted this did not intend to prohibit partners or associates.

Mr. du Plessis: That is correct.

Senator Smith: Perhaps we were unduly exercising ourselves.

Senator Croll: Whether or not we do it legally and take a very narrow view makes very little difference. You could not possibly sell it in this day and age. That is why I said, on Senator Godfrey's suggestion about the reading of that law, that that was all right but that was for another day.

Senator Smith: We have to be practical about these things. Permit me as a greenhorn to apologize for being emphatic. I do not really mean to be.

The Chairman: This is a very important issue.

Senator Smith: I do not mean to be emphatic in a way that is critical or unpleasant. I sometimes just get carried away with my feelings, I guess.

We may talk about the necessity of clean hands, bright appearance and shining armour, but there must be rules

that can be reasonably followed by practical people engaged in the business of life from day to day. I just do not see how you can draw any line that will go halfway between complete prohibition, whether it is partners or any other kind of associates, and, on the other hand, trying to work out something that is practical. I do not see any halfway measure.

I confess at once, so that there is no doubt about it, that I am thinking about my own position as the circumstances guiding my thinking; not merely because it is my own but because I think other people must be in the same boat. Let there be no doubt about my own position. It is that after my experience with this effort at having a fixed salary it became apparent to all of us that that was nothing more than a subterfuge, and we might just as well stop that sort of effort, comply with what we interpreted to be the best kind of behaviour for me and the firm to follow, become a partner and then just stay away from anything that was really significant in dealing with government matters, even if I were a member of the opposition. Thereafter, if one of my partners wanted to call up the income tax people—after all, the province is directly concerned with income tax and succession duties—or appear before a government public servant dealing with these matters, he just did it. The government knew about it; everybody knew about it; the House of Assembly knew about it. That is the way we conducted our affairs, and we did not see how we could do it in any other way. However, I recognize that what might look allright to me or my associates might look like the very dickens to somebody else.

I do know from experience that it is very difficult to get a set of rules that are practical and which will preserve the ability of the member to say truthfully, "I do not benefit either directly or indirectly from any activities of my associates related to government servants or public servants or government boards or tribunals." With the deepest respect, I say that being paid a salary does not solve the problem because the money for that salary comes from all the different sources of income the firm has.

I keep talking about lawyers. I guess most of the others here do too. As Senator Buckwold pointed out, this does not merely apply to lawyers; it applies to every kind of profession or occupation that operates in partnership or even as a corporate body.

Senator Buckwold: Engineers, architects, and especially accountants because they are now in major national firms.

The Chairman: International.

Senator Buckwold: International firms.

The Chairman: I think we have discussed this at some length. I suggest we leave it to Mr. du Plessis to clarify some of the questions that were raised, and we shall discuss it again.

There was one other point at our last meeting about which there was a question. I remember that some senators were very disturbed that proposal 2 provided that only members of Parliament convicted of treason, bribery or any indictable offence, for which the sentence is death or imprisonment for a term exceeding five years, are disqualified. They were disturbed that senators were not. Well, under the British North America Act, section 31, subsection 4, the same provision applies to senators.

Senator Croll: Thank goodness.

Senator Laird: That settles that.

The Chairman: I do not think we have to worry now.

Senator Smith: We had better refrain from serious crime!

The Chairman: Proposal 4 deals with incompatible offices. It may take some time. Does the committee want to continue? It is almost 4 o'clock.

Shall we start with proposal 4 at the next meeting? I am prepared to continue.

Senator Croll: May I suggest one thing? We are going to get into trouble until we finally decide something on proposal 3.

Senator Laird: We have got to take time.

Senator Croll: What I was going to say was that we should give Mr. du Plessis a little time to explore it. I do not care where he goes, as long as he brings us back a report to indicate something in a practical sense. Give him a week or give him two weeks, whatever he requires, so that he can canvass it, but let him devote himself to that because he understands the problem completely. If he gets the information sooner, we can come back, but until we overcome that hurdle, we are in trouble.

The Chairman: Well, proposal 4, for example, has nothing to do with proposal 3.

Senator Croll: It may not, but you may find that we will be back to No. 3 constantly from the other proposals.

Senator Laird: I agree with Senator Croll. It is probably the most fundamental thing we have to consider. I have read them all. It occurred to me that proposal 3 is extremely fundamental and, even though I realize different subject matters are dealt with, it may very well have to be referred to from time to time.

I was going to say, Mr. Chairman, from a more mundane standpoint, that since some of us have a few things to do—like phone calls which do not involve any reward!—perhaps we could agree that we do not sit too beastly late so that we can arrange for passports and things like that for which we do not get paid and, therefore, not continue too long in committee.

The Chairman: Well, does the committee want to adjourn now?

Senator Croll: I would say so. Let us do some more thinking on that problem for a while.

The Chairman: We cannot leave the subject.

Senator Croll: No.

The Chairman: We will be suspect if we appear to delay.

Senator Croll: We are not delaying.

The Chairman: We will meet next Tuesday at 2.30.

Senator Langlois: No, we cannot; November 11 is Armistice Day.

Senator Croll: That will give him some time then; we will not be here.

The Chairman: Do you not want to go on for another half hour now?

Senator Croll: Go ahead.

Senator Buckwold: I do not see anything wrong with looking at proposal 4. I gather it is really just the preamble, and it deals with the proposed Independence of Parliament Act.

The Chairman: You have to read section 10 and section 11 of the draft legislation which spell it out a little more clearly.

Senator Buckwold: We can go on for another half hour, with respect, in view of the fact that we are not meeting next week.

The Chairman: We can deal with proposals 4, 5, 6 and 7 together.

Senator Laird: And polish them off.

Senator Croll: Not too quickly. It should be looked at carefully.

The Chairman: I know one or two points will have to be raised. Proposal 4 reads:

It is recommended that there be a preamble to the "Independence of Parliament Act" stating that certain offices are incompatible with membership in the House of Commons and the Senate either because they constitute a conflict of interest, violate the principle of the supremacy of Parliament, or violate the concept of the division of powers between federal and provincial jurisdictions.

I suggest that you look at section 10 of the proposed legislation on page 43. It says:

No Member of Senator shall hold any of the following offices, commissions or employments:

Well, there is no question about the office of Governor General or Lieutenant Governor; judge of a court; employment in the Public Service; any office, commission or employment under the authority of the Governor in Council, the Treasury Board, any minister or other office of the Crown or any department, agency or corporation set out in any of the schedules to the Financial Administration Act; any elected provincial office or any position on the Council of the Northwest Territories or the Yukon Territory; and any office or employment under the authority or control of a province of Canada or under the jurisdiction or control of any foreign government.

Senator Croll: Mayor is excluded.

The Chairman: Mayor is excluded.

Senator McIlraith: Mr. Chairman, clause 10(d) states:

No Member or Senator shall hold any of the following offices,—

(d) any office, . . . appointed by or under the authority of the Governor in Council, . . .

I am thinking specifically, as an example, of the Abbott Commission on Parliamentary Accommodation. The senators and members of the House of Commons are appointed by the Governor in Council to that office. They are not paid. They are prohibited on this.

Senator Langlois: What about our own Speaker?

Senator McIlraith: I believe they were specifically appointed to that commission, without pay, by the government with the concurrence and approval of Parliament.

The Chairman: The way this is worded they could not accept that office or commission unless it was covered by 11(c), which says that section 10 does not operate to prohibit a member or senator from holding any office, commission or employment that an Act of Parliament expressly provides may be held by a member or senator.

Senator McIlraith: There is no such act of Parliament, Mr. Chairman.

The Chairman: That would cover the Speaker, would it not?

Senator McIlraith: The Speaker is appointed by the Governor in Council.

Senator Langlois: That is under the Constitution.

The Chairman: Yes, it is covered by the Constitution.

Senator Croll: That is an act of Parliament.

Senator Buckwold: What is the meaning of the word "office"?

The Chairman: I was going to ask the question under (f) "any office or employment under the authority or control of a province of Canada". I will cite a personal example. I have frequently been appointed by provincial governments to arbitrate disputes within exclusively provincial jurisdictions—for example, a dispute affecting school teachers or transit employees or, in Newfoundland, hospital employees. Would I be occupying an office or employment prohibited under this section?

Senator McIlraith: You would be occupying a commission which was prohibited.

Senator Laird: If that is what is meant by this, it is just ridiculous.

Senator Croll: How long has this been on the books? For some time?

The Chairman: No, this is new.

Senator Croll: How is it that the question did not arise in the other place, because they have many people who have various offices.

The Chairman: I don't know. It was not raised in the other place, but there is no such provision now in the law.

Senator McIlraith: Up to this point, Mr. Chairman, the offensive feature of any such proposition was that the member or senator was receiving pay.

The Chairman: Are you talking about a federal or provincial appointment?

Senator McIlraith: Federal. It was never thought that if the senator or member performed a duty on a commission for nothing—

Senator Croll: Senator Goldenberg does not work for nothing.

The Chairman: No, but that is irrelevant, Senator Croll, because I am not talking of a federal office. I have been appointed by various provinces over the years.

Senator Smith: I wonder if the word "office" does not mean something in the nature of a permanent and recognized office.

The Chairman: Then what about "employment"?

Senator Buckwold: You will notice that "f" does not use the word "commission". It only means office or employment which is the permanent kind of thing.

The Chairman: That may be.

Senator Langlois: Would this prevent a lawyer from acting as counsel for a provincial government?

The Chairman: I think so.

Senator Laird: There you are. That would be ridiculous.

Senator Langlois: It has nothing to do with the job of a Member of Parliament or a senator.

The Chairman: Any more than acting as an arbitrator.

Senator Langlois: It is the same thing, surely.

The Chairman: It also says "under the jurisdiction or control of any foreign government", and I have been chairman of two royal commissions appointed in the West Indies.

Senator Buckwold: I think they foresaw that argument by deliberately leaving out the word "commission".

Senator Laird: I think Mr. du Plessis should find out for us.

The Chairman: It may well be that "office or employment" signifies a permanent office or permanent employment.

Senator McIlraith: It does not say "permanent."

Senator Langlois: It must mean any office or any employment.

The Chairman: Yes, it must, and it would preclude a senator from acting as counsel to a province in a provincial matter.

Senator Langlois: Yes, and how could there be a conflict of interest there? I think they have gone overboard with this.

Senator Buckwold: Mr. Chairman, I am presently appointed by the Minister of Urban Affairs as chairman of the Canadian National Committee for the United Nations Conference on Human Settlements. It is not a Senate appointment. I happen to be a senator as chairman. As a citizen I am doing my duty and working hard at it. Would this preclude me from serving on that committee?

Senator Laird: It might.

Senator Croll: You say you are appointed. He does that under his own act; there is no special appointment.

Senator Buckwold: He has asked me to serve.

Senator Croll: It is a different matter entirely.

The Chairman: No. It says, "under the authority of the Governor in Council, the Treasury Board, any Minister or other officer of the Crown."

Senator Buckwold: So it would preclude anybody from performing an outside service, then.

The Chairman: To put it into effect immediately might take you off the hook, senator.

Senator Croll: What are the schedules in the Financial Administration Act, Mr. Chairman?

The Chairman: Well, it is a long list, senator.

Senator Langlois: Well, after the Financial Administration Act it says "under any enactment or otherwise". It goes beyond the Financial Administration Act there.

Senator Laird: I would like Mr. du Plessis to advise us as to the proper interpretation, and if it is an interpretation which excludes somebody like Senator Langlois from acting for a provincial government or a municipal government, or you, Mr. Chairman, for example, from acting as an arbitrator in a labour dispute involving provincial matters, then I would definitely be in favour of a change.

Senator Smith: Could we not deal with that by putting in a definition section to define what "office" means and what "employment" means?

Mr. du Plessis: For the purposes of that act, yes. Incidentally, there is a general rule on the interpretation of statutes that says that every word in a statute should be given its ordinary and grammatical sense. I wonder if you would like me to read to you the ordinary sense of the word "office" as it is defined in the Shorter Oxford Dictionary. Definition 4 says:

A position to which certain duties are attached, especially a place of trust, authority or service under constituted authority.

That is the (a) part of the definition. The (b) part is:

In the absolute sense, an official position or employment, especially that of a minister of state.

That is the definition in the Oxford Dictionary, for whatever value that might have.

The Chairman: It does not help much.

Mr. du Plessis: No, it does not, really.

Senator Smith: It would not be too difficult to devise a definition which would deal with the questions relating to such kind of work as yours, Mr. Chairman, or that referred to by any other senator. That could be put in a definition section.

The Chairman: I think these three terms, "office," "commission," and "employment" should be defined. Certainly we should have, if not a general definition, at least a definition for the purposes of this legislation.

Senator Buckwold: Would this preclude a member of the Senate being appointed to a royal commission?

Senator McIlraith: This is a point I raised, and the chairman said it did; but I think in the past there have been senators on royal commission.

Senator Laird: There are some now.

Senator McIlraith: The Advisory Commission on Parliamentary Accommodation is composed mainly of members of Parliament and senators.

Senator Asselin: Are you not on this committee?

Senator McIlraith: Yes.

Senator Asselin: You are in conflict of interest; you should resign!

The Chairman: Are you suggesting he should resign from the Senate?

Senator Asselin: No, Mr. Chairman.

The Chairman: Suppose we leave No. 4, with instructions to Mr. du Plessis to come back with definitions of these three terms. It will not be easy for Mr. du Plessis. I see him looking at the Shorter Oxford Dictionary. There is a 32-volume Oxford dictionary, of course, that he might look at.

Now proposal 5.

It is recommended:

(a) That there be a provision in the "Independence of Parliament Act" which would make federal and provincial offices incompatible with membership in the House of Commons and the Senate...

Well, that is the section we have just read again. It is the same thing. Proposal 5(a). The former one was the preamble.

Senator Buckwold: We did not look at that preamble in detail—or did we?

Senator Laird: Look up section 10.

The Chairman: There is no preamble in section 10.

Senator Buckwold: The preamble is on page 39. They have all the whereases. That is the preamble. I think we should look at that to make sure the wording is correct for proposal 4.

The Chairman: For proposal 4 the appropriate paragraph is paragraph 3.

And whereas the principle of the supremacy of Parliament and the division of powers in the federal system results in the incompatibility of certain offices, employments and commissions with membership in the House of Commons or the Senate;

Senator Laird: Well, there again, we are dependent on interpretation.

Senator Buckwold: They use the words "certain offices" there, which, again, gives you, you know—

Mr. du Plessis: —a certain flexibility?

Senator Buckwold: Yes. Flexibility.

Senator Asselin: Who is going to give us an interpretation of it?

Senator Buckwold: I say they have not continued that into section 11; but they did in the preamble include the words "certain offices", and it is true that certain offices do include a conflict.

Mr. du Plessis: Except that there are exceptions to section 11.

The Chairman: Yes. I think those exceptions cover your case, Senator McIlraith. Proposal 5 further recommends:

That Section 11 of the "Senate and House of Commons Act", which permits Members of the House of Commons

I do not know why they do not say the Senate.

to hold otherwise prohibited offices in the service of the Government of Canada, if there is no salary or

benefit of any kind attached, not be included in the "Independence of Parliament Act"

Senator McIlraith: But, Mr. Chairman, when you read section 11, it says that the proposed "section 10 does not operate to prohibit a... Senator from..."—and then in the things it sets out there is no exception of a royal commission. So it is omitted from that section.

Mr. du Plessis: We can easily suggest that it be added to that list of exceptions.

Senator Buckwold: And there could be other things we could put in the list of exceptions; but I would suggest that proposal 4 is sort of the "motherhood" statement, and is acceptable.

The Chairman: The second part of proposal 5 is section 11 of the proposed act, which says that section 10 does not operate to prohibit a member of the House of Commons or a senator from being a member of the Canadian Armed Forces, or being a member of the reserve forces, holding any office commission or employment that an act of Parliament expressly provides may be held by a member or senator, and being a member of the Queen's Privy Council for Canada. That is also covered in proposal 6.

Mr. du Plessis: If I may interject, to follow up on Senator Buckwold's remark about proposal No. 4, referring in a general way to the violation of the concept of the division of powers between federal and provincial jurisdictions, I wonder if it could be said that there is a violation in the case of every office or employment under the authority or control of a province of Canada. This is perhaps something that we might want to look into.

Senator Buckwold: They use the words "certain offices". Are you referring to proposal 4?

Mr. du Plessis: No. I am referring to paragraph (f) of section 10, which prohibits members or senators from holding any office or employment under the authority or control of a province of Canada. I wonder if the holding of any kind of office under the authority of a province is necessarily a violation of the concept of the division of powers between federal and provincial jurisdictions. I think this is something we might want to examine.

The Chairman: I would like to ask Senator Smith something. When your successor appointed me mediator to settle the strike at Sydney Steel Corporation two years ago, did you consider that a violation of the concept of the division of powers between federal and provincial jurisdictions?

Senator Smith: No, I did not, Mr. Chairman. As a matter of fact, I rather thought it was a very good appointment.

The Chairman: Although I was a senator?

Senator Smith: Although you were a senator. I felt constrained to tell my successor that I thought he had chosen well.

The Chairman: Thank you.

Mr. du Plessis: Rather than being a violation of that concept, perhaps it is more nearly carrying out the spirit of the legislative authority of section 91 of the BNA Act, which says that it shall be lawful to make laws for the peace, order, and good government of Canada. So perhaps this was in the spirit of that concept.

Senator Smith: I think that this paragraph (f) goes too far, unless of course the definition we use takes care of the objection.

The Chairman: I think we should consider the definition of "office" and "employment" very carefully in both 10 and 11.

I now come to proposal 7. We will close with this.

It is recommended that the laws regarding incompatible offices permit as many Canadians as possible to participate as candidates in an election. Once elected, however, those holding incompatible offices should be required to relinquish them or forfeit their seats—

I do not think we can quarrel with that principle once we agree on incompatible offices.

Senator Buckwold: Could I ask about the definition of "once elected"? Would you support that as against "once being sworn in"? Or does it mean that if the election is on July 8, and Parliament does not assemble until August 11, or whatever date it might be, a member of Parliament must immediately relinquish these things? I am just putting forward the idea that there should be created the opportunity to do this, but it certainly should be done before you are sworn in and take your seat.

Senator Croll: You are not paid until you do get sworn in, so you will obviously get sworn in as quickly as you can. There may, however, be lots of time from the time the member is officially elected until he is sworn in.

Senator Buckwold: I think this means that as soon as you are elected you must immediately divest yourself of any possible conflict.

The Chairman: Do you have an objection to that?

Senator Buckwold: I am just wondering whether we are making it too difficult. It depends on how tightly you are interpreting "once elected".

Senator Laird: Of course, this is only a proposal. It refers to sections 17(2) and 15(2), does it not?

Mr. du Plessis: In the body of the model bill there is mention of members and senators. I guess you would say that you are not a member or senator until you have been sworn in.

Senator Buckwold: It says, "once elected".

Senator McIlraith: The whole difficulty turns on the improper use of the word "once". It is not once, twice or three times; it is "when elected", or "after being elected".

Senator Buckwold: I think the word "once" is wrong. In my mind it looks as if it means "at once", whereas it probably means "when elected".

Senator McIlraith: I suppose what the Oxford dictionary would tell us would be something about "one time", and that is not what it means at all. It is a wrong use of the word altogether.

The Chairman: It means having been elected.

Senator Smith: Mr. Chairman, may I raise what is perhaps a somewhat more fundamental question there? As I think I follow these provisions and the reference in the draft bill, if adopted it would mean that we would not mind the judges of the Supreme Court of Canada running

in an election. I am not at all sure that we would wish that to happen.

Senator Buckwold: The second paragraph on page 30 seems to take care of that. It says:

In keeping with this principle care should be taken to insure that those offices whose holders are barred from candidacy under the *Canada Elections Act* are also included among those offices set out in the *Independence of Parliament Act* whose holders are disqualified as Members of the House of Commons.

I think that deals with the point you raise.

Senator Smith: But Proposal 7 by itself would allow holders of incompatible offices, among which are judges of the Supreme Court or any other court, to hold office during their candidacy, because it says there that they have to vacate them if they are elected.

The Chairman: I think, senator, that is covered under the *Canada Elections Act*. If I remember correctly, when Senator McCutcheon decided to run for the House of Commons he had to resign his seat in the Senate before becoming a candidate. That came under the *Canada Elections Act*, and that situation would also apply to judges.

Senator Smith: Then why should we give our imprimatur of approval to something which on the face of it, without reference to some other act, would allow a person such as a judge of the Supreme Court to become a candidate in an election?

The Chairman: Well, I think we could add in there something like, "subject to the provisions of the *Canada Elections Act*," or something of that nature. That would exclude not only judges, because senators also cannot remain senators while being candidates for the House of Commons and then resign after being elected.

Well, honourable senators, the next section is a very long and involved one dealing with government contracts and the interests of members of the House of Commons and senators as shareholders and so on, so I suggest that we leave that for our next meeting; but at our next meeting we shall begin again with Proposal 3 and hear such suggestions and clarifications as Mr. du Plessis can provide.

So we will now stand adjourned until two weeks from today at 2.30 in the afternoon.

The committee adjourned.



Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

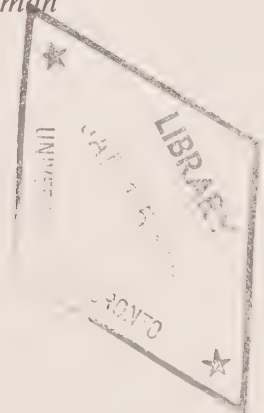
THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 27

TUESDAY, NOVEMBER 18, 1975

Fourth Proceedings on the Green Paper entitled:
“Members of Parliament and Conflict of Interest”



THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 10, 1975:

"With leave of the Senate,

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Petten:

That the Green Paper entitled "Members of Parliament and Conflict of Interest", tabled in the Senate on Wednesday, 9th April, 1975, be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, November 18, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Croll, Flynn, Godfrey, Laird, Neiman, Robichaud and Smith (*Colchester*). (9)

Present but not of the Committee: The Honourable Senators Argue, Greene and Haig.

In attendance: Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its examination of the Green Paper entitled "Members of Parliament and Conflict of Interest", with particular reference to Part IV headed "Guidelines and Proposals for Change".

At 4:25 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, November 18, 1975

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 2.30 p.m. to consider the Green Paper entitled "Members of Parliament and Conflict of Interest."

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, at the last meeting of the committee we referred certain questions to our counsel, Mr. du Plessis, and our research adviser, Mr. Finsten, and you now have in your possession a memorandum which has been submitted in reply. Certain senators told me this morning that they had not had a chance to study these answers. Therefore, I suggest that we defer consideration of this memorandum until our next meeting, and meanwhile we can consider the next proposal. Is that agreed, honourable senators?

Hon. Senators: Agreed.

The Chairman: I would also request that members of the committee keep those answers confidential until we have discussed them.

We had reached proposal 8 on page 30, under the heading "Government Contracts". Proposals 9, 10 and 11, which follow, are all related. Proposal 8 reads as follows:

It is recommended that the preamble to the "Independence of Parliament Act" express the principle that, generally, participation in a government contract by a Member of Parliament constitutes a conflict of interest and a violation of his fiduciary duty. Provisions regulating participation by Members in such contracts should be contained in the "Independence of Parliament Act".

There is some clarification of that proposal in the paragraph which follows.

Senator Croll: Mr. Chairman, what is the position of a lawyer who has a contract with the government for certain work that he does or services that he is paid for, and one of his partners is a member of Parliament? In addition, under those circumstances, what is the position of the member of Parliament?

Senator Godfrey: I might say that I have resolved that problem for myself by saying to my partners that I do not wish to participate in any fee that they might earn while acting for the government or for any crown agency. I understand other senators have made the same arrangements with their firms whereby they are excluded from such benefits.

Senator Laird: In other words, you are not a partner for that particular job?

Senator Godfrey: That is right.

Senator Laird: Well, did you not say the same thing last week? I know I said the same thing for myself, that I had excluded myself from any fee earned by my firm in such circumstances.

The Chairman: I think that is the answer.

Senator Laird: I am wondering, Mr. Chairman, if this general statement was not, perhaps, more directed to some sort of contract involving supplying the government with a product rather than contracting for services.

The Chairman: I think that read in its context that is how it should be interpreted.

Are there any further questions on Proposal 8?

Senator Laird: Actually, Mr. Chairman, this is an interesting type of situation. I might draw the attention of honourable senators to a situation which has arisen municipally.

We have a case in Windsor now of a fireman who moonlights by working for a certain organization which, in turn, has a contract with the City of Windsor. That situation is currently being discussed by the city council. It is this type of situation at which proposal No. 8 is aimed.

Senator Croll: The municipal level is somewhat different. In the area surrounding Toronto—I do not remember the name of the township, but a member of the council who was an officer of a corporation that had a contract to do work for the city, which they did and for which they were paid, said that he did not share in the proceeds. The case was taken to court, where he lost and had to give up his seat. I do not know the specific details, but he did declare at council that he did not share. A taxpayer took the case to court. As a matter of fact, was there not a similar case in Windsor in which a member who had some connection with a corporation was caught in one way or another? That is the law that was applied in municipalities in connection with contracts for work, rather than services.

Senator Laird: If a member of Parliament acquired any pecuniary gain through a company in which he was a shareholder out of any contract to supply goods to the government, he would certainly be in conflict, would he not?

Senator Croll: This involved more than a shareholder, it being a man who had a vital interest in the company but who said he did not share when questioned in council, but a ratepayer took the case to court and the council member was defeated.

Senator Neiman: Mr. Chairman, I do not know whether all partnership arrangements are similar, but if a partnership agreement is simply to share a percentage of the earnings of the law firm, for instance, from whatever source it may come, it would be very easy to exclude a

person from contracts in which government departments would be involved. However, if the arrangement with the firm were really on more or less a retainer basis which apparently would have no direct relation to the work coming into the firm but may, in fact, do so, a person could be put in a slightly different fiduciary capacity. Perhaps that is what happened in some of the cases we are discussing. We must know the type of relationship a person has to the firm concerned. Essentially, that must be determined. I could be on a retainer of X number of dollars and next year perhaps, for no reason at all apparently, that could be doubled, but there would be an essentially very good reason for it if my contacts with government were such that the firm was benefiting in some indirect manner.

Senator Laird: Of course, if that were pursued to its ultimate it would be beyond all reason. For example, no farmer could then really be eligible for membership of Parliament, because occasionally he would have to vote on agricultural matters.

Senator Neiman: I agree.

Senator Laird: So the line must be drawn somewhere. Somehow or other, Mr. Chairman, we always seem to pick on lawyers, but the same is really true of others, such as farmers, ridiculous though it may sound.

The Chairman: In any event, Senator Neiman, you could not receive that doubling of the retainer, because of the new controls.

Senator Greene: Pepin will get you!

Mr. Chairman, would this clause go sufficiently far that it would preclude a wheat farmer drawing some indirect subsidy at least—through the Wheat Board, for instance—from the federal government, from sitting as an MP?

Senator Croll: That is not a direct contract with the government, because the Wheat Board is a completely separate organization.

Senator Robichaud: Supposing, however, a big farmer in the West had a loan with the Farm Credit Corporation and the legislation were to be amended in some fashion, would he have a right to vote on the amendment although he had a substantial loan from the government?

Senator Laird: If we go far enough, Senator Robichaud, he could not even sit as a member of Parliament and pretty soon we would have no one qualified to do anything by way of legislation.

Senator Robichaud: We are going much too far.

The Chairman: Senator Robichaud, I believe your question will be answered in connection with proposal 11(f), which reads as follows:

A Member of Parliament should be permitted to participate in a government contract if the purpose of such contract is to permit the Member to take advantage of government programmes, established by legislation or regulation, which are available to the general public.

Senator Buckwold: Yes, except that would not give him the right to advocate, because proposal No. 3 provides:

A Member (Senator) shall not advocate any matter or cause related to his personal,—

So if he were a member of Parliament wishing to speak in connection with the Farm Credit Corporation, he could not advocate it.

Senator Flynn: There would then be a more vicious circle when members of Parliament discussed their indemnities.

Senator Robichaud: Suppose there is an amendment to the legislation doubling the amount of the loan available and he himself wishes to double his own loan, would he be allowed to talk and vote on it, or would he be disqualified?

Senator Croll: If he declares his interest, he can speak on it. All he has to say is that he is a farmer and has this type of loan and this is what should be done in the circumstances.

The Chairman: Some of these matters must be left to the conscience of senators and members of the other place.

Senator Laird: Precisely.

Senator Flynn: When we get to the root of the problem it is a question of disclosure of interest, and you will find a solution there for most of these questions.

The Chairman: I think so.

Proposal No. 8 which I just read is a recommendation for a preamble. Proposal No. 9 recommends as follows:

It is recommended that there be a provision in the "Independence of Parliament Act" which would prohibit a Member of Parliament from participating in or deriving any benefit directly or indirectly from government contracts except those contracts for which there is explicit provision.

It appears to me that this repeats the present provisions of the Senate and House of Commons Act. Section 16 appears at page 52, and section 22 is at page 54. I have just looked at them hastily, Senator Croll. Section 16 applies to the House of Commons and section 22 to the Senate. I do not think there is a new principle involved in proposal 9.

Senator Croll: I have some difficulty in understanding proposal 9.

The Chairman: Counsel draws my attention to the definition of the word "participate" in the draft bill, on page 40, which says:

"participate" means, in relation to a government contract, to participate by being a party to or having a beneficial interest in the contract, or by being a shareholder, an officer, a director or a manager of a corporation that is a party to the contract or whose wholly owned subsidiary is a party to the contract, or by being the spouse of a person who is a party or a shareholder of a party to the contract.

Senator Laird: It limits it to spouse.

Senator Greene: Mr. Chairman, I wonder if counsel can help me. Does "government" mean the federal government or any government?

The Chairman: This applies only to the federal government. We are dealing only with conflict of interest of members of Parliament; we cannot legislate for provincial governments.

Senator Robichaud: But the guidelines will be closely followed by both the municipal and provincial governments.

The Chairman: That is their concern.

Senator Flynn: No member can be involved in a provincial contract.

Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel: I think you should take note, senator, of the definition of "government contract" which is in the model bill on page 40:

"government contract" includes any contract

- (a) for the supply of goods or services,
- (b) for the sale, lease, purchase, use or hire of property, or
- (c) for the lending of money by or to the Crown;

The Chairman: Honourable senators will see the definition of "Crown" on page 39:

"Crown" includes the Government of Canada or any department, agency or corporation set out in any of the schedules to the Financial Administration Act;

Senator Neiman: That answers the problem.

Senator Haig: Mr. Chairman, does that mean that, being a shareholder of a company which has a contract with the government, you are out?

Senator Croll: No. When we get down to proposal 11, we have some guidelines.

The Chairman: That is right, Senator Croll.

Senator Flynn: The question is, "being concerned with" or "having an interest in." Suppose the government gives a contract to a company for the building of a bridge and the company hires the services of an engineer who is a member of Parliament. Does the engineer have an "interest in" or is he "concerned with"?

Senator Croll: Was that matter not raised in Montreal, where an engineer was hired by the city or one of the towns?

Senator Flynn: By the city.

Senator Croll: No, not by the city; by the corporation. They had a contract, and they tried to upset the mayor and failed.

Senator Flynn: I am putting the question here. I think this is one of our main difficulties. When do you become "interested in?" Your services are hired by the person or corporation having a contract with the government, but you were probably hired before the company received the contract, for preparing the project.

Senator Greene: It says "directly or indirectly."

Senator Godfrey: He would not be permitted to participate. He knows that he is working for the corporation which has a government contract; he knows he is working on that particular contract.

Senator Flynn: Until a contract is awarded to his employer, his interest is very indirect.

The Chairman: In other words, you are saying, Senator Flynn, that you as a lawyer might be asked by a corpora-

tion to examine a bid they are submitting, to see if it is properly worded. There is no contract.

Senator Flynn: There is no contract yet. But if there is a contract, can I continue to advise the client on the implications of the contract; can I give an opinion?

Senator Laird: Yes, because you are a lawyer and you are examining the contract only from the standpoint of a legal formality.

Senator Flynn: The engineer has drafted the plans and specifications, the contract is awarded, and his employer, who is not the government, could say, "Go on with the survey of the work."

Senator Godfrey: I would say he is more directly involved than the lawyer, because he is doing the actual work.

Senator Flynn: Is that what we want?

Senator Croll: I do not think we want that, I do not think we are getting that.

Senator Godfrey: Want what?

Senator Croll: We are not trying to involve either the lawyer or the engineer under those circumstances.

Senator Flynn: But the word "indirect" goes very far.

Senator Croll: I suppose the word is subject to some indirect definition. It is in the normal course of business, where nothing unusual is happening. I do not know whether you can make a distinction between a mechanical specialist, or some other specialist, and a legal specialist. Certainly it would not affect us as legal men and should not affect others in any degree. I do not think it does.

Senator Flynn: On page 54 it says:

22. (1) No person, who is a member of the Senate, shall directly or indirectly, knowingly and wilfully be a party to or be concerned in any contract under which the public money of Canada is to be paid.

Senator Godfrey: He is doing the work, and he is the man concerned.

Senator Croll: The one who is concerned is the man who makes the contract. From then on Joe Blow who may be a crane operator, or Smith, who may be a mechanical engineer, is not concerned; His concern is with the man with whom he made the contract, not with the Government of Canada.

Senator Godfrey: But he is concerned in the contract. When you look at the purpose of this bill, it is to stop members of Parliament getting government money. This man would be getting government money.

Senator Flynn: But you have to say where it stops, otherwise the "indirect" interest in a contract goes so far that you may not know yourself that you are concerned with a contract.

The Chairman: Senator Flynn, you are dealing with provisions in the present House of Commons Act.

Senator Flynn: I do not think there is any improvement in the proposal. Is it your view, Mr. du Plessis, that it does not go that far?

Mr. du Plessis: It is my impression that it does not go that far in the proposed bill, because the word "indirectly" has to be looked at in relation to the definition of "participate," and I think the key words relating to the point that we are discussion are "having a beneficial interest in the contract".

Senator Flynn: But if you are the engineer, you certainly have a beneficial interest, especially when engineers, for the most part, work on a percentage basis.

Senator Greene: What concerns me, Mr. Chairman, is that the whole philosophy behind the entire exercise is that a member of Parliament, whether a member of the House of Commons or a member of the Senate, should be able to live on his parliamentary stipend, and if that is the case, then there is a very limited group who could run for parliamentary office or who could accept a senatorial appointment.

Senator Godfrey: That is not the philosophy behind this at all, with all due respect, Senator Greene. The philosophy is that members of Parliament should not benefit from government contracts, and there are a great many people in this country who are getting along very nicely without having any participation in government contracts.

Senator Flynn: We are trying to find a formula by which members of Parliament will know exactly where they stand. It is difficult for one to know where one's interests start. This, I think, is the crux of the problem. General terms such as "indirectly" should be avoided. We should know in precise terms exactly what is wrong and what is right. For example, if the proposal were to state that a company of which a member of Parliament holds more than 5 per cent of the shares cannot have a government contract, then at least that would be clear; there would be no doubt about it. However, if the term used is "indirectly interested," then the question arises as to where one's interests start.

Senator Croll: But you have to go back in time. It has traditionally been the practice for members of Parliament to stay away from government contracts. On the other hand, in more recent years experts have been coming to Parliament—medical experts, mechanical experts, legal experts, and what not—who, from time to time, have been in one way or another concerned or involved with people who may have had contracts with the government. However, so long as they are not direct contracts, and so long as they are intended to be of a general nature, then there would be no conflict. It has always been the tradition that the guidelines were not intended to hamper parliamentarians.

Senator Flynn: I agree with you, Senator Croll, but it seems to me that you are not in agreement with what Senator Godfrey has said.

Senator Croll: But wherein do we disagree? Senator Godfrey has said, in essence, that if there is a \$1 million government contract and one of the architects of an interested firm is a member of Parliament, then under those circumstances he cannot participate in that contract.

Senator Godfrey: No, it was a simpler proposal in relation to Senator Flynn's comments, and that was that if a man gets a \$200,000 government contract and goes to a member of Parliament who has an engineering firm and asks him to do \$100,000 worth of the work, then that would

constitute an indirect interest. In other words, he has a \$200,000 contract and he then approaches a member of Parliament and asks him to handle \$100,000 worth of the work under the contract . . .

Senator Croll: No, that is not what Senator Flynn is saying.

Senator Godfrey: The member of Parliament is simply saying, "I will do a certain amount of work under this contract for you. You have the contract. I do not have the contract. I will do half the work and I want half the fee." That is reducing it to its simplest form.

Senator Croll: In those circumstances, he would declare his interest.

Senator Godfrey: Yes, and he would not take the money.

Senator Croll: But you would then have him closed out.

Senator Godfrey: That is right. He cannot be fooling around with these kinds of things.

Senator Croll: That takes us back to Senator Smith's argument of the other day in which he said that the fact that he is a senator should not interfere with his right to earn a living or the right of his law firm to earn income. Our reply to Senator Smith at that time was that he should declare that he has no interest in those moneys which the partners are earning as a result of government contracts or services rendered to the government, and with that we felt he would be in the clear.

Should this man be in any different position Senator Smith, or you and me for that matter, or anyone else who may have an interest in a law firm? Can this man not also say that he is not sharing in this? What is the difference?

Senator Godfrey: I have no problem with that. Senator Smith carried it to an even greater extreme than I was prepared to. I am glad to see in the interpretation of proposal 3 that plain English is still interpreted as plain English and, therefore, your partners can do certain things that you yourself cannot do.

Senator Flynn: I do not think I have too many difficulties with that. However, if you are supplying services to someone who has a contract with the government, do you then have an interest in that contract?

Senator Godfrey: To take one example, the Dominion Foundry and Steel Company is a client of my firm, and we supply services to Dominion Foundry and Steel Company all the time, the profits from which I participate in, but I have no direct relationship to any contract that Dominion Foundry and Steel has with the government. I cannot even tell you whether it in fact has a government contract, but I am sure it does. However, I am not working on that specific contract, if in fact it has one, or participating in any fee that is being paid under that contract.

Senator Flynn: You are saying that you can distinguish the income accruing to your firm from corporations that have contracts with the government from income derived directly from services provided by your firm to the government. I cannot accept that.

Senator Croll: What Senator Godfrey is saying, in effect, is that individually it is wrong, but collectively it is okay.

Senator Godfrey: Before dealing with that, I have an excerpt from the code of ethics of the Canadian Bar Asso-

ciation which, I think, is relevant to this. The Canadian Bar Association has studied this whole area, and the Code of Professional Conduct was adopted by the National Council. I have reproduced chapter 9 of the Code of Professional Conduct, which is entitled "The Lawyer in Public Office," which I think is relevant to the matter being discussed by the committee. I do have Xerox copies which can be distributed.

The Canadian Bar Association spent five years in arriving at this Code of Professional Conduct.

The Chairman: I think we should postpone discussion of this code of conduct until next week in relation to Proposal 3.

Senator Flynn: The problem may be to try to define what is an indirect interest. Direct is quite simple to me, but an indirect interest is something that should be clarified.

Mr. Du Plessis: Senator Flynn, a moment ago I think you were saying, if a member in his capacity as a lawyer is acting for a company that has a contract with the government, would this mean he has a beneficial interest in the contract?

Senator Flynn: If it is only one out of ten contracts, he may not have a special interest; but if the company does a lot of work for the government he is certainly interested in seeing that this company remains very active with government contracts.

Mr. du Plessis: He has an interest in the company in the sense of providing service to the company.

Senator Flynn: That is the point. I am referring you to the word "indirect". How far does it go? That is my only point.

Senator Greene: Surely it would go as far as meaning that no member of Parliament or senator can be a partner in a law firm that does any business for CMHC.

Senator Flynn: There is no doubt about that, because there you are hired by CMHC. If my firm is hired by the contractor that builds for the government, have I an indirect interest?

Senator Croll: There are dozens and dozens of lawyers who are not members of Parliament, but there are members of Parliament whose firms handle CMHC business in which they have not participated, or do not participate. That is not abnormal. A junior member of the firm gets involved with trying to get CMHC business but the senior, who is a member of Parliament, does not. There used to be quite a number of them who did that. In earlier days there were even more who practised law than do now, who got a big sum of money. They always did the same thing. I think you are suggesting the very fact they deal with CMHC, is the bad part of it. That is the way they got around it. I do not see anything wrong with it myself.

Senator Flynn: That word "indirect" would indicate to me that I got no specific cut from CMHC money, but you could say that CMHC money helped carry the overhead of the firm, so indirectly I got a benefit.

Senator Smith: I wonder if Mr. du Plessis would not get a good deal of the answer if he looked up the definition of "participate" in the draft of section 2 on page 40, and then looked at the main prohibition of a contract, which is

found in section 3 of the draft. The prohibition is to participate.

Senator Flynn: "Beneficial interest" is very wide.

Mr. du Plessis: But it is a "beneficial interest" in the contract. In the other situation you would have a beneficial interest from the fact that you are acting for the company; there would be benefits to be derived from so acting, and this would be your interest. However you would not really be deriving any benefits flowing directly out of the contract. It seems to me that that is what we have to think about in the context of the definition.

Senator Laird: From this discussion it seems to me that Senator Flynn has raised the fundamental issue.

The Chairman: Indirectly.

Senator Laird: Indirectly. I must say, what worries me is that any attempt to reduce a definition of "direct" or "indirect" to definitive terms will introduce a situation that may be so rigid as to be unworkable. Therefore, should we not consider, as we have often done, using general language like that, plus leaving the ultimate adjudication on a more or less ad hoc basis?

Senator Croll: The British do not define "indirect."

Senator Laird: That is what I am getting at.

Senator Flynn: I am not suggesting that we clarify this statement right now. I have always questioned myself to determine whether I had an indirect interest in something, or a beneficial interest. "Beneficial interest" is rather a wide term.

The Chairman: I will ask Mr. du Plessis to look into the interpretation, if any, that has been given to "indirect" under the present Senate and House of Commons Act. It has been there for a long time.

Senator Flynn: Or the proposal, "participate,"

The Chairman: Or the proposal.

Senator Croll: Mr. du Plessis, if you look back to 1945 you will find that question was asked of the Department of Justice by Mr. A. W. Sinclair, a member of the House of Commons. It was not in the house but was by letter to the Department of Justice, as I recall it. I read it. It was on that very point of how far a member of Parliament can go in representing a client, and what was a benefit, directly and indirectly, was actually decided on and defined. You will find that in the Department of Justice.

Mr. du Plessis: Very good, Senator, I will look into that.

The Chairman: We will go on to proposal 10:

It is recommended that no Member of Parliament be permitted to participate in the management or direction of a company having a government contract or agreement.

Senator Buckwold: This raises a very important issue. Does that mean the director of a company in which the individual director may not necessarily hold a large pecuniary interest would be precluded from being a director of that company if the company dealt with the government? I am thinking of, for example, a bank, a trust company or any number of companies that in the course of their business are bound to have some government con-

tracts. Is that how that should be interpreted? They use the word "direction."

Senator Flynn: Here there is no doubt about the proposal. The director of a company having a contract with the government would not be eligible, or would commit an offence under the proposed legislation. I agree with the idea in relation to a shareholder having five per cent of a publicly owned company, but the director of a company is not, generally speaking, in a more interested situation than the lawyer or anyone else whose services may be supplied to the company having the contract.

Senator Buckwold: I can interpret that as including members of Parliament being directors of a company that even remotely may have an opportunity of being involved with the government in a contract.

Senator Flynn: All banks do business with the government.

Senator Laird: Sure.

Senator Buckwold: If this is what you mean by the management or direction of a company. I am not sure whether "direction" means your work as a director or whether "direction" has some other interpretation.

Senator Laird: Of course, if you are a director of a company, you do participate in direction.

Senator Buckwold: Sometimes.

Senator Flynn: You are supposed to.

Senator Godfrey: I have been a director of Montreal Trust for six years and I have never been conscious of the fact that I have contributed anything to the management or direction at any time.

Senator Croll: Then what are you a director for?

Senator Flynn: That is the reason why they keep you as a director.

Senator Godfrey: I mean simply that they have an executive committee which, in effect, does the work of the whole board of directors. As for the banks, the same thing applies. You cannot tell me that a board of 60 directors of a bank sit around solving executive problems.

Senator Buckwold: I think the next sentence clarifies what they really mean when they say directors, when it says:

Members should be required to register annually with the Clerk of the House or Senate a list of those companies in which they are officers, directors or managers.

So, in fact, they literally say "directors".

The Chairman: The definition of "participate" also includes "a shareholder, an officer, a director or a manager".

Senator Laird: So, you are caught both ways.

Senator Flynn: There is no doubt about that.

Senator Buckwold: Mr. du Plessis, you were going to say something?

Mr. du Plessis: That is the answer I was going to give you. You were wondering about the meaning of "management" or "direction" of a company and that is contained in the definition of "participate".

Senator Buckwold: This is a very important and significant proposal, and I presume it is incorporated in the proposed act.

Mr. du Plessis: Sections 2 and 3.

Senator Buckwold: I am not arguing for or against it. I am just saying we should be aware of the consequences.

Senator Croll: What did the House of Commons committee do on this?

The Chairman: I will read their recommendation.

It is recommended that the Proposals entitled 'Government Contracts' be amended or deleted to meet the following counterproposals:

(a) that, in order to clarify the requirement that a Member of Parliament avoid and sever connections with companies engaged in government contracts, as specified in the proposed "Independence of Parliament Act", a schedule listing those government corporations and agencies, which would put a Member of Parliament in conflict of interest, if his or her company or one in which he or she has had the required percentage of interest entered into contractual business arrangements with such corporations or agencies be compiled and published annually by the Standing Committee on Privileges and Elections in a Report to the House.

Senator Buckwold: What does that mean?

Senator Croll: Disclosure, isn't it? That is all he is saying.

The Chairman: This means that the government corporations and agencies be listed so that a member of Parliament will know that a contract with such an agency is one that either affects him or does not affect him.

Senator Croll: No, no; he discloses.

Senator Flynn: A shareholder?

Senator Croll: He discloses what interest he has and they can make it public. That is what I gathered from that.

Senator Flynn: No, no.

The Chairman: This is merely the schedule of government corporations and agencies which would put a member of Parliament in conflict of interest.

Senator Buckwold: He would know. If he was dealing with the CBC, he could be in conflict of interest.

Senator Flynn: How would he be—as a shareholder? How does that sentence start?

The Chairman: "in order to clarify the requirement that a member of Parliament avoid and sever connections"—the words is "connections"; that is all—"with companies engaged in government contracts as specified in the proposed Independence of Parliament Act".

Senator Flynn: What is "connections"? That is even worse than what we are faced with.

Senator Laird: You see, this is just about an impossible solution, in my humble opinion.

Senator Buckwold: It is no solution at all; it is clarifying who the government and government agencies are.

Senator Flynn: That should be easy. We know what government is and we know what an agency of the government is; I have no difficulty.

Senator Laird: Well, it is listing the corporations.

The Chairman: As Senator Buckwold pointed out, the second paragraph of proposal 10 requires members to register annually with the Clerk of the House or Senate . . .

Senator Flynn: That I agree with also.

The Chairman: . . . a list of those companies in which they are interested.

Senator Flynn: The general principles are as formulated in section 3 of the proposed act:

Except as otherwise provided by this Act, no Member or Senator shall participate, directly or indirectly, in any government contract.

We have examined the definition of "participation" but "directly or indirectly" is still in section 3.

Senator Laird: Well, actually Senator Buckwold has raised something fundamental. It comes into that broader issue, which we have already talked about, that if you make things so rigid that no person wants to become a member of the other place, or a member of the Senate, then who is going to run the country?

Senator Buckwold: You are going to have to make up your mind. Parliament wants to make sure that it has nothing to do with either a direct or indirect interest. It is really saying that if your company is involved in contract with the government and you are a director of that company, then you are breaking the law if this is the law.

Then you say that a director of any company that could possibly deal with the government will not be a member of Parliament.

Senator Haig: You would have a shorter list, if you said all those who do not have any interest.

Senator Buckwold: You would be precluding some of the finest talents—and I am speaking of members of the House of Commons. Many today hold very wide interests in companies, and not to the detriment of the country at all. As a matter of fact, it has widened and broadened their experience. They very often make better members of Parliament. As long as you insist on the declaration of a conflict of interest—listing all your directorships and interests, as outlined.

Senator Robichaud: Suppose I am the director of an insurance company that owns a huge building and leases part of it to the federal government, another part to the CNR, and another part to another Crown corporation, Air Canada . . .

Senator Buckwold: You will be a former director.

Senator Robichaud: But suppose I am a director . . .

Senator Buckwold: You will soon become a former director.

Senator Flynn: You cannot retain that interest and stay in the Senate.

Senator Robichaud: Then I am disqualified?

The Chairman: According to this proposal, I believe you would be disqualified.

Senator Robichaud: But if I were to disclose that I am a director.

Senator Flynn: As drafted you would still be in contravention of the act.

First, I think we should start by trying to determine what "direct" is and what "indirect" is. In my opinion "direct" means being a party to the contract, whereas "indirect" suggests an interposed person for instance, if you own 5 per cent of the shares of a publicly created company, or, if it is not publicly created, if you own any shares. I believe that is the intention, in which case it would be by an interposed person that you would be a party to the contract. But I suggest that merely being a director of a company should not be sufficient, if you do not own a substantial number of shares.

Senator Greene: That is not what it says, however.

Senator Flynn: I realize that. I am simply suggesting another way of looking at it.

Senator Godfrey: There can certainly be a real problem with respect to government contracts. For example, I was a director of Canadian Admiral, which probably does over \$100 million worth of business per year. It does perhaps a couple of hundred thousand dollars of business through some obscure contract with the National Defence. I could not even tell you what it is all about; there is some security involved. When I was appointed to the Senate I decided in my own mind that because they did have that specific contract I should resign as a director. On the other hand, I am a director of the Montreal Trust Company and that does not bother me at all. The Montreal Trust has some kind of agreement with the Canada Council whereby they hold securities in their vaults, for which they are paid perhaps \$2,000 or \$3,000 a year.

Senator Croll: That is not a government contract.

Senator Buckwold: Anything over a thousand dollars a year is a government contract.

Senator Laird: I think it is ridiculous.

Senator Godfrey: I think the second case is ridiculous, but not the first. The Montreal Trust Company is not looking for government business—they may get it incidentally, but that is all; whereas Canadian Admiral is looking for government business—not that they have been particularly successful. I think you have to draw the line.

Senator Buckwold: You cannot draw the line.

Senator Godfrey: You have to draw it somewhere.

Senator Buckwold: Well, the thousand dollars they set is where you draw the line. Maybe it should be a hundred thousand dollars, I don't know; but one thousand dollars really wipes out any kind of contract.

Senator Godfrey: It is a matter of degree.

Senator Buckwold: There are hundreds of implications here when we look at our personal problems or relationships. For example, I am manager of a company which has a government contract put out on tender. We generally get the contract because we are one of the few people in the line. We supply window blinds to three or four military

installations in Saskatchewan; we buy them from somebody and supply them on tender. During the year it amounts to perhaps \$2,000, but according to this green paper it means literally that our company could not do that business. If that is the way it is, we simply will not tender, but that is the kind of thing we are looking at.

Senator Laird: And it is simply ridiculous.

Senator Buckwold: Perhaps we should be looking at that one thousand dollar figure and bringing it to a more realistic amount. Even at that the Senate would be in a vulnerable position, because some of our members are directors of large corporations, all of which have some government connections.

Senator Flynn: Which you may not even know about.

Senator Buckwold: That is right. You may not even know about it.

Senator Robichaud: Coming back to the question, Mr. Chairman, I am not satisfied with the answer that was given.

The Chairman: The answer would be, Senator Robichaud, that if this proposal is adopted and enacted you would have either to resign from the Senate or resign from your directorships.

Senator Robichaud: This is a mutual company without any shareholders. I do not own even one share.

Senator Buckwold: Well, it says that if you are a director or are involved in the direction of the company, which can be interpreted as being a director, then you are in conflict.

Senator Laird: That is why we cannot let this sort of thing stand or, worse yet, get into the act.

Senator Robichaud: I am a director of that company, but I do not get even one penny from the company at the end of the year for the services I render to it. There will never be any conflict of interest between myself and the taxpayers of the country. We own a huge building that we lease to the CNR, the Hotel Beauséjour in Moncton. Last year I was invited to sit as a member of the board of directors, but there is absolutely no conflict of interest as far as I am concerned because I am not making one penny out of it. I am just donating my time to a good cause. In my opinion, there should be some provision in the act to cover such a case.

Senator Flynn: I agree.

Senator Laird: We all agree with you one hundred per cent.

Senator Flynn: The act may be going too far.

Senator Robichaud: I say it is; I have no doubt that it is.

The Chairman: Senator Buckwold, would you put no restrictions on the provisions with respect to directors?

Senator Buckwold: I believe we have to have some restrictions, Mr. Chairman.

Senator Flynn: Surely, if you had a restriction with respect to shareholdings, that would be sufficient. That is the real interest. If you consider the director of a bank, he has as much interest if he owns so many shares—I do not know how many thousands of shares—as when he was a

director with only a few; more, even. Being a director no longer means a thing. It is the number of shares you own which is the real test. Otherwise, why would you disqualify a director simply because he is a director but not disqualify a lawyer because he acts for that corporation, or an engineer or architect or anyone else?

Senator Buckwold: Just a moment. If the lawyer is an M.P. and is acting for the company, he is disqualified.

Senator Flynn: Yes, but he is acting for that company generally and is probably more important than the director as such.

Senator Buckwold: Oh, I see. You are using the degree of importance.

Senator Flynn: Yes.

The Chairman: Your point, senator Flynn, is that if a director owns a large number of shares he then has a beneficial interest because he is profiting. If he is a director and owns only one qualifying share he is not benefiting.

Senator Flynn: No more than a lawyer or an engineer or an architect working for that company.

Senator Robichaud: And if he is not benefiting, which is my case . . .

Senator Flynn: He is not benefiting at all.

Senator Robichaud: Then I see no conflict of interest. In my opinion, that situation should be covered.

Senator Flynn: It would be if the only test were the number of shares you owned. In your case that would be the solution.

Senator Croll: But the number of shares is not really the test. If a person is on the board of directors it is not really significant how many shares he has.

Senator Flynn: No, that is right.

Senator Croll: So that is not really the test.

Senator Flynn: No. The number of shares. You see, the proposal is here that a contract with a private company, or not one whose shares are publicly traded, would disqualify anyone who is a shareholder, whatever number of shares he held; but if the shares are publicly traded, unless you have more than 5 per cent there is no problem. If the company has more than 5 per cent, then you would be in contempt of the legislation.

Senator Buckwold: It could be that we should look at whether a director should not be disqualified unless he holds 5 per cent of a public company.

Senator Croll: Unless he owns 5 per cent?

Senator Buckwold: Unless he owns more than 5 per cent.

Senator Croll: Well, that is what they are trying to say here, are they not?

Senator Buckwold: They are saying that, but just as a shareholder.

Senator Flynn: They are adding a director, too, whatever number of shares he has.

Senator Buckwold: On the other side, I would like to see that \$1,000 per year aspect raised to something that would be realistic. No one is going to get rich on that.

The Chairman: We have not reached the exceptions, Senator Buckwold. You are dealing with the exceptions.

Senator Buckwold: Can I read something to you, Mr. Chairman? This is the press release, dated July 17, 1973, which was made public when this thing first came out. Just to clarify this I would like to quote as follows:

It is proposed that, with certain exceptions, members of the house and senators should not be permitted to participate in government contracts, since such participation would constitute a conflict of interest and a violation of their fiduciary duty.

This would mean that no parliamentarian would be permitted to participate in the management or direction of a company having a government contract or agreement. In connection with this proposal, it is also proposed that members and senators should be required to register annually with the clerk of the House or Senate a list of those companies of which they are officers, directors or managers.

It is just as clear as that. You are not allowed to be a manager or a director of a public company that has a government contract or agreement. That is their explanation of that to the public.

Senator Flynn: My proposal, Mr. Chairman, for section 3, is that, "except as otherwise provided in this act, no member or senator shall be a party, personally or by an interposed person, to any government contract." Then you define what is an interposed person. It can be a spouse, it can be a company in which you would own 5 per cent or more of the shares that are publicly traded, or simply a shareholder in a company whose shares are not publicly traded, or any other situation that may come to mind. That would be clear. You are a party by yourself or by an intermediary, like your wife or a company. Then you would know where you stood.

Senator Croll: You know, Mr. Chairman, I think you ought to ask Allan MacEachen to let the draftsman of this document come before the committee just to explain to us what he had in mind. I am intrigued by this. There was a man who did it, with two other people. Let him come before the committee and just explain what they had in mind. We are having trouble with it and, after all, there are people here with many years of experience, and they could perhaps enlighten us on these matters.

The Chairman: In anticipation of this meeting, I met this morning with Mr. Bertrand and Mr. Tait, of the Privy Council Office, who were, with John Reid, the principal witnesses before the House of Commons committee. I thought that they may have been the draftsmen, but they said they did not draft it.

Senator Croll: No, they did not; but I looked through the evidence in the House of Commons, though I did not read it completely, and I was completely unimpressed with the kind of evidence they had. It was not a subject that they knew more about than I do, on account of my experience; but somebody here drafted this and had something in mind. If there was no particular motive in mind, he could tell us that this is what he thought was the right thing to do. Mr. MacEachen will tell you who it is if you ask him,

and we can then ask whoever it is to come before the committee and speak to us. There is no reason why he should not.

The Chairman: I will convey your wishes.

Senator Godfrey: It is quite clear that they are trying to cut down on the number of directorships in companies doing business with the government. On the other hand, if you get the man who drafted it, you cannot ask him about policy.

The Chairman: There is no government policy on this.

Mr. du Plessis: Is it not a question, really, of what this committee has in mind? This is a bill where the policy has to be determined by the committee. It is unlike any other government bill in that it is the members of Parliament themselves who have to decide what the policy is. The green paper is merely a proposal that has been put forward, but it is the members of Parliament who have to decide on the substance of the proposed bill.

Senator Croll: We are practical people here. We cannot see any substance or good in this at all. We can therefore say to him, "What did you have in mind?" We may find out that he is a first class professor, and we throw it out the window. We may say, "We will do it this way, and we will handle it in a practical fashion." On the other hand, he may give us arguments that may convince us that there is something we have missed in all this.

Mr. du Plessis: On the other hand, what he had in mind is clearly or should I say relatively clearly, expressed in the document before us.

Senator Croll: He had in mind that none of us could be directors of corporations.

Senator Buckwold: It is in this press release.

Senator Croll: He is not talking sense.

The Chairman: Senator Croll, I will discuss this with Mr. MacEachen. If he is in Ottawa tomorrow—he is in town today—I will talk with him and report back to the committee next week.

Senator Buckwold: There is another side to this. Senator Robichaud has indicated that he is a director of a company which makes a profit, but from which he derives no benefit. What about the wide variety of non-profit organizations which most of us are involved with, like art galleries, or theatres, or charitable organizations? They have government contracts. Almost all of these receive some assistance, or have a contract, or some kind of government relationship. At least, most of the ones I am involved in do. I seem to get involved in all kinds of them. Does this mean that no one can be an unpaid director of a non-profit organization that has a government contract? I would like to have that clarified.

Senator Flynn: I have no doubt that the act would prohibit that.

Senator Godfrey: I have read something in here somewhere in the last few days that covers that very point.

Senator Buckwold: Forgetting the profit end, or the business end, of things, so many of us, especially members of Parliament, are involved in non-profit organizations in our communities that have government contracts.

Senator Robichaud: For example, being a member of the board of governors of a symphony orchestra that gets a Canada Council grant.

Senator Flynn: Or a university. All universities receive research contracts, or money for research under an agreement with an agency or department of the government. The Research Council does this; there is no doubt about that.

Senator Buckwold: That is the story of my life.

The Chairman: Well, gentlemen, I will discuss this with Mr. MacEachen, and our counsel will, in any event, pursue the meaning of some of the terms used. Let us proceed now to proposal 11 which provides for the exceptions.

It is recommended that the following provisions be inserted in the "Independence of Parliament Act" to allow for exemptions from the provisions of Proposal 9:

(a) A Member of Parliament should be permitted to own shares, directly or indirectly, in a company having a government contract or agreement when it is a public company (a company whose shares are publicly traded) in which the Member owns less than 5 per cent of the total number of issued shares of the company—

Members should be required to register annually with the Clerk of the House or Senate a list of those public companies in which their holdings are under this threshold if the companies are involved in government contracts...

In complying with these disclosure requirements, Members should be able to disclose other interests they may have in private or public companies even though these companies do not have government contracts...

The last paragraph, you will notice, is permissive.

Senator Laird: What is the idea of the permissive portion of that paragraph in (a)? What is its purpose?

Senator Buckwold: Again it is like Caesar's wife; that is all.

Senator Flynn: I would say that I am in complete agreement with full disclosure without any restrictions of any kind.

Senator Croll: Where do you see any restrictions?

Senator Flynn: Here it is only permissive. But I feel you should have disclosure of all your holdings in companies—except perhaps government bonds—but all other shares in any company should be disclosed.

Senator Buckwold: Senator, would you go further and say that every member of Parliament should each year make full disclosure of his personal net worth? I may say that I am not averse to that myself.

Senator Flynn: It would not be of necessity a completely public disclosure, but it would be filed with the Clerk of the Senate, and if any problem of conflict should arise then these documents could be consulted.

Senator Croll: Senator Flynn, sometimes when I listen to you I think you are a little naïve. You say, "filed with the Clerk of the Senate," but how long do you think they will stay confidential without getting out?

Senator Flynn: Well, it may form part of a rumour, but at least it would be better founded than some of the present rumours.

The Chairman: I might point out to you that that was an amendment suggested by the committee in the House of Commons. Here is what that committee recommended:

Every Member of Parliament shall, within six months of assuming office and on May 31st of each year thereafter, file with the Registrar, the following information, together with such additional information as the Registrar may require:

(1) his or her taxation return for the year current or preceding;

(2) his or her financial and pecuniary interests, direct or indirect, of every kind and nature whatsoever, including such interests of the Member through his or her spouse and/or dependent children, as well as trusts of which he or she or his or her spouse and/or dependent children are the trustees or beneficiaries.

Senator Robichaud: Mr. Chairman, how can anybody who is a parliamentarian play the stockmarket?

The Chairman: It does not say here that you have to.

Senator Robichaud: Because one week you may own 1,000 shares in a certain company and then the following week you may have disposed of them.

Senator Flynn: But it says here that it shall be registered on May 31, so on that date you adjust your declaration. But what is more important than that is what they say, if anything, about the disclosure of this information to the public or otherwise. I think there must be some restriction there.

The Chairman: If you will give me a moment I shall read it to you:

Your Committee emphasizes that statements of financial interests made by Members of Parliament pursuant to the requirement for private registration, as opposed to the requirements for public disclosure to be provided for in the proposed Independence of Parliament legislation, shall be deemed to be absolutely confidential to the Registrar—

They recommend the appointment of a Registrar.

—and shall not be made public except under the provisions of a court order or upon a request made to the Registrar by the Standing Committee on Privileges and Elections pursuant to a specific reference to the Committee by the House of Commons involving an allegation of conflict of interest.

That is the protection.

Senator Flynn: That seems to me to be rather reasonable. It may be slightly refined, but I see nothing against it.

Senator Buckwold: They are doing that more and more at all levels of government.

Senator Flynn: They even do it in companies; one is required to disclose one's other interests.

The Chairman: I have a question on paragraph two of 11(a), where it says:

Members should be required to register annually with the Clerk of the House or Senate a list of those public

companies in which their holdings are under this threshold if the companies are involved in government contracts...

How does the average shareholder know whether Bell Telephone or the Steel Company of Canada or any other company has government contracts? How would he even know in the case of a small company?

Senator Flynn: Or a subsidiary thereof?

The Chairman: That is right. How does a shareholder find out?

Senator Flynn: That is why you would get rid of this problem if you had simple disclosure.

The Chairman: That is the problem as I see it.

Senator Flynn: I appreciate that. I am a member of a cement company, and I do not know if they sell cement to the government or not. They may even do so through an intermediary.

Senator Godfrey: They probably sell them cement for runways.

Senator Flynn: Yes, but indirectly, probably. At any rate, I do not know.

Senator Buckwold: At any rate, we can deal with that one in the concrete rather than in the abstract.

Senator Godfrey: Just as a matter of information, it is my recollection that some of the proposals do not involve, in the case of public companies, listing how many shares you have. You would simply list the companies in which you have shares.

Senator Flynn: Well, I think you probably would list the number of shares because it is important to know if you have more or less than 5 per cent of the shares. This applies particularly when they are publicly traded.

The Chairman: I would think so too.

Senator Buckwold: I would go even further and say that every member of Parliament should have a statement of net worth, confidentially given in the same way as the income tax people get it if they ask for it.

Senator Flynn: I know it would be very interesting to investigate all these declarations, but I also know that I would be ashamed of mine.

Senator Laird: You and me both.

Senator Croll: When I first heard that proposal read out there were screams all over the place, and the person who proposed it immediately withdrew it and forgot about it. The difficulty, as I see it, about full disclosure is that you put it into the hands of somebody, and it may be said to be confidential, but it may not remain that way and it may become subject to rumour and speculation. That is the difficulty about full disclosure. It is not the disclosure itself, but what gets out in parts.

Senator Laird: Yes, because today it may be suppressed by legislation; tomorrow that legislation could make it open to the public. Is that your point?

Senator Croll: Yes, and within reason, of course, what was said with respect to full disclosure.

Senator Buckwold: Mr. Chairman, is that not presently contained in the regulations in so far as cabinet ministers are concerned?

Senator Croll: To the Prime Minister, to the Privy Council.

Senator Buckwold: Some cabinet ministers are prepared to make it public and others prefer not to do so.

Senator Flynn: It will make it very difficult to become a member of Parliament.

Senator Croll: It is difficult enough now, for some people.

The Chairman: Proposal No. 24 covers your point, Senator Flynn. You expressed embarrassment with respect to your net worth. Proposal 24 reads as follows:

It is recommended that a provision be inserted in the "Independence of Parliament Act" to enable the designated standing committee to grant special dispensation to any Member or Senator, where it can be shown that, for reasons of public interest or undue personal hardship,...

Senator Flynn: I come under that, "... undue personal hardship".

The Chairman: I thought that would cover your case. Let us now return to proposal 11(b):

A Member of Parliament should be permitted to participate in any government contracts (not permitted by the other provisions of the "Act") when the true aggregate value of the contracts does not exceed \$1,000 in any one fiscal year.

Members should be required to register annually with the Clerk of the House or Senate the details and amounts of contracts falling within this exemption.

Senator Buckwold: I wonder whether that could be changed so that we could have an amount for an individual contract and another amount for an accumulated total during the year? For example, it could be left at \$1,000 for an individual contract, but should not be more than \$25,000 during a year.

Senator Flynn: Or a percentage.

Senator Buckwold: A percentage of what?

Senator Flynn: The gross income, or the net income.

Senator Buckwold: That would leave it wide open.

Senator Flynn: What is the difference to a large corporation doing billions of dollars' worth of business? There is not as much significance to them in \$50 million as there would be for a small company in which \$25,000 may represent 50 per cent of the income of the company.

Senator Godfrey: As a matter of fact, a small, privately-owned company would find \$25,000 more significant than \$500,000 would be to a large, public company.

Senator Flynn: I would agree with the idea of "for individual contracts."

The Chairman: Proposal 11(c) is as follows:

A provision should be inserted in the "Independence of Parliament Act," similar to sub-section 21(b) of the "Senate and House of Commons Act," which would

permit a Member of Parliament to hold a government contract if the completion of such contract, expressed or implied, devolves on him by descent or by marriage or operation of law, provided he disposes of the contract within 12 months.

Members should be required to register annually with the Clerk of the House or Senate the details and amounts of contracts falling within this exemption.

Senator Flynn: It is also "by operation of law". Do you have any case in mind, Mr. Chairman?

Senator Neiman: I suppose it could happen in the case of one company taking over another. For some reason even a trustee in bankruptcy might take over a company.

Senator Flynn: It must involve a contract of some kind.

Senator Laird: Yet that 12 months may constitute a positive hardship.

Senator Flynn: It is not important, and I withdraw my question, but I cannot see it.

Senator Neiman: No, I suppose it is to cover some contingencies we cannot even think of at the moment, really.

Senator Laird: That is what worries me about the whole set-up. If we attempt to be too rigid and include the limitation of 12 months, we will be stuck with it. If these cases were treated individually and ruled upon by some type of tribunal, it could be dealt with on the merits rather than under a rigid rule such as this.

Senator Neiman: Did the House of Commons not recommend that there should be a registrar, or some type of tribunal established? In my opinion, we should remain flexible, and exact time limits could be determined by the registrar as to what would be reasonable under particular circumstances. That would be far more flexible.

Senator Laird: Exactly.

The Chairman: I have referred to two amendments recommended by the committee of the House of Commons. The one to which you make reference, Senator Neiman, comes under the heading "Financial Interests", which we will deal with later, when I intend to refer to it. The committee of the House of Commons actually made only about four recommendations altogether.

Senator Robichaud: Mr. Chairman, on a matter of procedure, we are discussing certain aspects now which are extremely important, such as disclosure. How do we intend to report the thinking of this committee on the matter of disclosure?

The Chairman: We thought that the committee would hold a general discussion. We are now studying this, following which we will hold the general discussion and prepare a draft in due course. The proceedings are being printed and we know the views of the senators. A drafting subcommittee of this committee will prepare a draft, which will be considered in detail by the full committee. It would be unwise to simply deal with this in part, with each head separately. In my opinion, it is wise to deal with it in its entirety, unless the committee feels otherwise. However, the proposals tie in.

Senator Flynn: Yes, I think it is necessary to go through it proposal by proposal. However it would be a good thing,

if any member of the committee has a specific suggestion, to mention it at this time, so that when the drafting committee starts working they can find the suggestions that have been made during the course of our discussions.

Senator Robichaud: I say this, Mr. Chairman, because I wish to reserve the right to return to the matter of disclosure.

The Chairman: You certainly have that right, senator. Senator Flynn, the particular suggestions are being noted. Your concern with the word "indirect", Senator Buckwold's suggestion in connection with directors, and so on, are all being noted.

Proposal 11(d). I do not think we shall quarrel with this one. It says:

A provision should be inserted in the "Independence of Parliament Act," similar to sub-section 21(c) of the "Senate and House of Commons Act," which would permit a Member of Parliament to purchase public bonds or debentures of Canada which are generally provided or offered by the Crown on terms common to all persons.

Senator Flynn: Perhaps we could help the government further by saying that those bonds could remain secret and not be subject to disclosure!

The Chairman: We will make a note of that, Senator Flynn.

Senator Flynn: You could hide a lot!

The Chairman: Proposal 11(e):

A Member of Parliament should be permitted to participate in government contracts for the supply of goods and services or use of property which are generally provided or offered by the government to the public on terms common to all persons.

Senator Flynn: What does that mean?

Senator Croll: If you go and buy one of those guns from the customs.

Senator Godfrey: Would that not take care of Senator Buckwold's problem?

Senator Buckwold: No, it would not. It is not an offer to the public. "Public" means every citizen, as against a commercial corporation, when the government offers surplus equipment for sale, a variety of things which the government is doing in which the public has the right to participate, such as a piece of land or a building for sale, as against a commercial activity.

Senator Greene: Or Olympic coins.

The Chairman: Proposal 11(f):

A Member of Parliament should be permitted to participate in a government contract if the purpose of such contract is to permit the Member to take advantage of government programmes, established by legislation or regulation, which are available to the general public.

Members should be required to register annually with the Clerk of the House or Senate the details and amounts of contracts falling within this exemption.

In addition, Members should be required to disclose the amount of any grants or subsidies they receive

from the government, even though no contract may be entered into in order to qualify for the grant or subsidy.

This would cover Senator Argue's point. He has now left the committee room. It would cover subsidies to farmers, fishermen and so on.

11(g):

A Member of Parliament should be permitted to participate in government contracts the purpose of which is to reimburse the Member for travelling expenses.

Members should be required to register annually with the Clerk of the House or Senate the details and amounts of travelling expenses except those expenses incurred when travelling at the request of the Governor in Council, a Minister of the Crown, or on business approved by the Senate or House of Commons.

That presents no problem.

Senator Flynn: It is, however, interesting. I am wondering if, under the present legislation, a member of the Senate can travel at the request of the government or a minister of the Crown and be reimbursed. I do not think he can at present.

Senator Haig: He can get his travelling expenses.

Senator Flynn: I do not think he can. This is something new. The only travelling expenses for which he could be reimbursed are those provided in the regulations of the Senate.

Senator Greene: They are paid for by the House of Commons.

Senator Flynn: If they are paid for by the House of Commons, it is not at the request of the Governor in Council or a minister of the Crown. That is something different. I am curious as to why a minister should ask a member or senator to travel.

Senator Neiman: I recently attended a conference arranged by the Solicitor General's Department. The minister said that we would be reimbursed by the Solicitor General's Department, but it was pointed out to him that members of Parliament attending the conference would not be reimbursed. So far as our travelling expenses are concerned, we are covered individually. I am not quite sure what it means there.

Senator Flynn: The only travelling expenses you can claim are those provided under the regulations of the Senate.

Senator Neiman: What about the member who goes to the United Nations as an observer?

Senator Flynn: That is provided for under the budget of the House of Commons and the Senate. It is under the regulations; it is not in the minister's budget.

Senator Buckwold: On occasion I have represented the minister at the opening of a building, and I have had to travel to get there. The minister has asked me to submit my travelling expenses and I have received reimbursement for my out-of-pocket expenses.

Senator Croll: From whom?

Senator Buckwold: I presume from the minister's budget, from the Government of Canada.

Senator Flynn: We had better have Mr. du Plessis check on that and report.

The Chairman: Proposal 12:

It is recommended that a person who is a Member of the House of Commons in two successive Parliaments not be permitted to participate in any government contracts in contravention of the provisions of the "Independence of Parliament Act" during the period between the two Parliaments.

Senator Laird: What does that mean, Mr. Chairman?

Senator Flynn: When a dissolution occurs, you cease, in principle, to be a member of Parliament. In the intervening period, if you run as a candidate and are re-elected, you should not participate in any contract. This has been dealt with indirectly in the payment of the indemnity. Hitherto the indemnity was really a sessional indemnity. It is now paid on a monthly basis and the member is paid until election day. If he does not run again, he ceases to be paid. The same applies if he loses. The new member, although his election may be declared two weeks later, is paid from the date of the election.

Senator Greene: You are speaking from experience.

Senator Flynn: I have had experience of both: I have been paid before I was declared elected, and I have been paid until the day I lost.

Senator Croll: We will take your recommendation on that!

Senator Flynn: I don't know if it is worded in this way in the draft legislation, but it is badly worded. It should say that a member of Parliament is deemed to be a member of Parliament until election day.

Senator Godfrey: I think that is included in some discussion I read somewhere.

Senator Flynn: A member of Parliament might not run again, but he can immediately start doing business with the government from the day of dissolution. That could be the effect of this method.

Senator Neiman: It might be better to have some provision for declaring interest. A man who is defeated and enters into a contract, at a later date might decide to run again. In the meantime he might contravene a provision such as this. It might be better for him to declare the fact that he had entered into a contract.

Senator Flynn: Perhaps we should continue until election day; otherwise someone who loses could enter into a contract with the government. If he loses, he is all right but if he wins, he is in trouble. The way this is drafted, I could run and not be elected; yet in the meantime I could have had a contract with the government, and that would be correct.

Senator Laird: You could also promise the fellow a contract and give it to him as a prize for not running.

Senator Flynn: Yes, or for losing. That would be an even better deal, in some cases.

The Chairman: Proposal 13 reads as follows:

It is recommended that participation by a Member of Parliament in any government contract in contravention

of the "Independence of Parliament Act" render the contract voidable at the option of the Crown.

Senator Croll: That is the law now, I think.

The Chairman: I think so.

Senator Godfrey: To consider the implications of that, if it turned out that, unbeknownst to a public company, a member of Parliament was a shareholder of that company holding more than 5 per cent of the issued shares, then that company could lose the government contract.

Senator Flynn: It is at the option of the Crown. If the interest of the member of Parliament is minimal, the Crown would certainly not opt to void the contract. However, if there is a real scandal involved, then I think it would be the proper thing to do.

The Chairman: Next, proposal 14, which reads as follows:

It is recommended that a candidate for election to the House of Commons not be disqualified from candidacy because he is participating in government contracts prohibited by the "Independence of Parliament Act." A candidate should be required, however, the register with the Chief Electoral Officer, upon his nomination, a list of contracts or offices he holds which would be prohibited if he were a Member. A candidate should also be required to register a list of those companies in which the candidate owns more than 5% of the total number of the issued shares of the corporation if it is a public company...

A candidate should not be permitted, however, to participate in any contract with the government for the supply of services for which any public money of Canada is to be paid...

If the candidate is elected he should be required to register with the Clerk of the House upon being sworn in

as a Member or within two months the nature and extent of any prohibited participation in government contracts and cease such participation as soon as possible and in any event within one year...

Senator Flynn: I would say that the only relevant section of proposal 14 is the last one. The rest belongs to the Elections Act.

Senator Godfrey: My recollection, from reading the proceedings of the House of Commons committee, is that all parties in the other place disapproved of this; they felt it was much too onerous.

Senator Flynn: A candidate would have to divulge all kinds of information without even having been elected, and that in itself could prove very harmful. It would prevent many persons from becoming a candidate.

Senator Buckwold: Even worse, it would prevent many candidates from being elected.

Senator Godfrey: Did the committee of the other place recommend that proposal 14 be deleted?

The Chairman: The committee of the House of Commons did recommend that proposal 14 be deleted in its entirety.

Senator Flynn: We concur.

The Chairman: I should point out to Senator Buckwold, in relation to the \$1,000 maximum in proposal 11(b), that the committee of the other house recommended that that amount be taken so as to read "\$5,000".

The next section is headed "Financial Interests." Perhaps we should postpone consideration of the section on financial interests until next week. The Committee will adjourn until next Tuesday at 2.30 p.m.

The Committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

CAN 70-24
1-3-75



Government
Publication

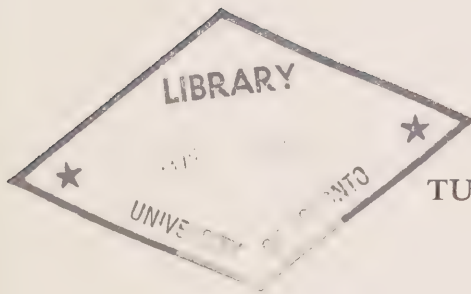
FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*



Issue No. 28

TUESDAY, NOVEMBER 25, 1975

Fifth Proceedings on the Green Paper entitled:
“Members of Parliament and Conflict of Interest”

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(20)

**Ex officio* members

(Quorum 5)



Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 10, 1975:

With leave of the Senate,

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Petten:

That the Green Paper entitled "Members of Parliament and Conflict of Interest", tabled in the Senate on Wednesday, 9th April, 1975, be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

November 25, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 3:00 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Flynn, Godfrey, Laird, Langlois and Neiman. (8)

Present but not of the Committee: The Honourable Senator Eudes and Riley. (2)

In attendance: Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its examination of the Green Paper entitled "Members of Parliament and Conflict of Interest", with particular reference to Part IV headed "Guidelines and Proposals for Change".

At 4:30 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, November 25, 1975

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 3 p.m. to consider the Green Paper entitled "Members of Parliament and Conflict of Interest."

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

Senator Laird: Mr. Chairman, before commencing the formal part of our meeting, may I make a suggestion? It is only a suggestion, of course, and is based on personal experience.

Great pressure is being put on us to complete necessary legislation and not have the usual rat race just before the Christmas recess. I am caught in the middle of this, and I am sure other senators on this committee are also. At this very moment, for example, I should be downstairs at the meeting of the Standing Senate Committee on Banking, Trade and Commerce dealing with the anti-inflation bill, which everybody agrees is a matter of great urgency. There are so many other pieces of legislation, such as the competition bill, for instance, and of course, other committees are in the same boat as the Standing Senate Committee on Banking, Trade and Commerce.

The situation is frightfully difficult for some of us, and without wanting to retard our progress on this very important matter, I was wondering whether this committee, in view of the fact that there are only a couple of meeting dates left before the Christmas recess, would perhaps consider calling this the last meeting before Christmas. I would like to get others' reactions. I may be speaking too personally, of course. There are, however, other important matters that we have to deal with, and some of us are tied up considering them. This question of conflict of interest is important, I agree, but it does not involve the pressure or great urgency that some of the other bills do.

Senator Langlois: In this respect, Mr. Chairman, I would like to point out that there seems to be no rush in dealing with this legislation. We are still waiting for the House of Commons to make up its mind. No legislation has been introduced so far, and I think we can take our time and give precedence to more urgent legislation such as Bill C-73.

The Chairman: I will be guided by the committee, of course, but I do not think we want the government to introduce legislation until it has had our views. It now has the views of the house committee, of course. When I look at the Order Paper, however, I do not get the impression that any action is contemplated in this domain in the near future. We certainly will not be able to complete our work within the next few weeks, and so as long as it does not appear that we are trying to avoid discussion of this problem I am prepared to agree to whatever the committee decides.

Senator Croll: Mr. Chairman, as has already been stated by the two previous speakers, the most important matter before us is the anti-inflation bill. I do not know of anything that could be half as important.

On the weekend, in Toronto, I met with representatives of an important industry involving hundreds of workers throughout Ontario and Quebec. They take the position that, "There is nothing for us to bargain about. There is no law; we are waiting until the law is passed." I convinced them, after making many telephone calls, that the bill will be passed in the house before the week is over, that it will take very little time in the Senate, and that they will have the law before the middle of next week. They held off, or the strike would have gone ahead on Monday morning.

The House of Commons started work on this bill this morning, and I am satisfied that they will be driving ahead with it all week. It is very important, and we have to get it out of the way somehow. There is, of course, other legislation that is important, but it is less contentious than the anti-inflation bill, although I hardly think it will really be contentious when they actually get down to working on it.

In addition, the last printed proceedings I have of this committee are dated November 4. We are obviously not going to complete our consideration of this matter before the Christmas recess, and we are not going to before March, April, or even May. Conflict of interest is not as serious a problem as inflation, but the minute you get into it, you realize just how contentious some of these things can be too.

There is no point in hiding from the facts. In the main, both the House of Commons and the Senate have a large number of lawyers. Lawyers make a tremendous contribution to Parliament; they are easily accessible, and they like it. Lawyers could be very seriously involved in this matter of conflict of interest unless we make sure we are as fair to them as we are to the public generally.

This is not going to be easy. I have been reading the British reports, and they do not have many solutions. It is going to take a lot of thinking on the part of men of goodwill, who come into Parliament to serve, and who at the same time expect to be able, to some extent, to carry on their practice, particularly in commercial matters that do not really affect Parliament in any way.

I did call you, Mr. Chairman, and ask you to obtain some information. If I recall, what I asked you to do—and this is very important and will take some time to do, although it ought to be done before we go any further into these matters—was to have research staff find out the number of directorships held by members of the Senate before being appointed to the Senate, and the number they have acquired since coming here, together with the dates and names of the corporations involved, in the case of public companies. I would not have asked you to do this, except that I started to look it up myself and found that the task

was far beyond me. I do not have the patience or the time to do it. This is a task that will take the research staff some little time to carry out, but I think it should be done.

That is one matter. There are a few more matters that I have in mind, but I do not think they are very important at the moment. If we devote ourselves to getting that information before the committee, we will be able to proceed from there.

Senator Godfrey: I am looking at the date of this report, Mr. Chairman. The date is July, 1973. As far as giving precedence is concerned, the only other committee that would be sitting on Tuesday afternoons would be the Standing Senate Committee on Banking, Trade and Commerce; and they will not always be sitting, it seems to me.

Senator Laird: They are going to be sitting three days a week.

Senator Godfrey: But how many members of this committee are also on the Standing Senate Committee on Banking, Trade and Commerce? Senator Laird and Senator Flynn, of course. Personally, I do not have anything else to do on Tuesday afternoons. I do not know about others.

There are 20 members per committee, of course. Can we not find enough Senators to cope with them all? What worries me is the impression created in the mind of the general public about the leisurely attitude we are adopting with regard to conflict of interest. After two years and four months we are still not much further ahead.

Senator Croll: But it has not been before us for two years and four months. It was referred to us a comparatively short time ago.

The Chairman: This was referred to us in April of this year.

Senator Godfrey: But it is two years and four months since this was published. It could have been referred to this committee at any time.

The Chairman: But the public does not refer this to us. We cannot proceed until it is referred to us by the Senate itself. Since it has been referred to us, I do not think we have been going slowly at all. As Senator Croll has said, it is a very difficult problem, and we have to consider it as carefully as we can. We have almost completed the proposals now, but the suggestion made by Senator Laird, and supported by Senator Langlois and Senator Croll, is one that we have to consider seriously. There is other legislation at the moment that takes priority and takes a good deal of the time of some senators. Senator Croll followed that by saying that he wants certain information prepared which he feels is necessary for the committee to arrive at a conclusion. I was going to say, Senator Croll, that I followed up on your call to me, and I was told that this would be a very long and difficult task—that is, to find out the directorates held by senators before being appointed to the Senate and those directorates to which they have been elected since their appointment. The Directory of Directors gives the names of directors but it does not give the date on which they were elected to the various boards. The information could be obtained by a questionnaire to each senator, but I cannot think of any other way.

Senator Croll: What is wrong with saying simply on the questionnaire, "You are a member of these boards. When were you appointed to these boards?"

The Chairman: But how do we get the information that they are in fact members of boards? I went through the *Parliamentary Guide*, and not every senator lists his directorships.

Senator Croll: But there is a book available which gives that information.

The Chairman: Yes, the Directory of Directors.

Senator Croll: And that is fairly well up to date.

Senator Godfrey: But only for public companies.

Senator Croll: I am only talking about public companies, not private companies.

Senator Asselin: But why would you want that information?

Senator Croll: I would want it for this reason: Did the senator acquire this directorship as a senator or did he acquire it on his own?

Senator Asselin: How can you decide that?

Senator Flynn: I have no objection to your question, Senator Croll, but I have certain reservations as to the results.

Senator Croll: Let us take the case of a senator who, at the time of his appointment, was a director of one or two corporations and then, over the next five, seven or ten years, becomes a director of 10 or 12 corporations. One could assume that the wisdom he acquired in the Senate suddenly got him all the rest of his directorships.

Senator Flynn: But it could possibly be the case that his wisdom having been recognized by the government was then recognized by the companies.

Senator Godfrey: Just to complete my submission, Mr. Chairman, I think we should try to conclude the so-called public meetings, if possible, before Christmas. At that time there may be enough, with another couple of meetings, to have some kind of consensus so that somebody on the staff can start drafting a report. I know that that is quite a job in itself. I would think that they could use the time between December 19 and when we come back after the Christmas recess to prepare something so that we can get down to the details, and at that time we should go *in camera*. In those *in camera* meetings we could decide what we were going to conclude. As I have said, it is going to take some time to produce that, and I think that the time to do it is when the Senate is not sitting. If we do not do it that way, then when the time comes we will just have to adjourn for a few weeks before getting down to considering this *in camera*. I know it is a difficult job to do. So, if this difficulty of sittings concerns only Senator Laird and Senator Flynn, who is *ex officio*, as much as we would want to have Senator Laird here, there are 18 other members of the committee he mentioned who will not be doing anything else on Tuesday afternoons.

Senator Croll: But we must face the realities. We have sat in this committee often enough to recognize the faces of those who attend regularly. Do you recognize any new faces? No, you don't.

May I just answer one question asked by Senator Asselin and Senator Flynn? There appeared in the *Globe and Mail*

this morning a Canadian Press report, and I do not know if you saw it. It concerns the Campeau Corporation, and mention was made of a senator who was on its board. Mr. Campeau was asked why the senator was on the board, and this is what is quoted in the press:

Meanwhile, Robert Campeau, chairman and chief executive officer of Campeau, said in an interview . . .

Here they give the name.

. . . became a director in 1969—a year after his appointment to the Senate by Prime Minister Pierre Trudeau—to help the corporation as it entered projects in Quebec.

That is his quote, not mine, as it appeared in the newspaper this morning. That is a pretty damning sort of thing to get before the public. I am not suggesting that there is anything at all improper in that, but what I am saying is that we should see what is happening in the Senate. When we get the information I have suggested, then we can take a look at it and see what the situation looks like.

Senator Flynn: I have no objection to that, but I cannot see why you would not want to divulge the private company directorships too. Why make a distinction?

Senator Croll: I do not want to make a distinction, but I do not want to interfere with a senator's private business either.

Senator Flynn: Because it may be very important if you have three or four directorships in a private corporation, too. I must say that in principle I am in favour of full disclosure.

Senator Croll: All right, let us have both private and public corporations.

Senator Godfrey: Could we not just send a questionnaire around? I would suspect that there are not nearly as many senators involved in this situation as one might think at first glance. I do not know how many senators have been asked to become directors of companies since being appointed to the Senate. All I can say is that nobody has ever asked me to become one.

Senator Asselin: But how can we force a senator to disclose?

Senator Croll: We don't have to try to force senators to disclose.

Senator Neiman: One would assume that each senator will co-operate, whether he is a member of this committee or not. But in the ordinary course of events, if one is a member of the Senate, and we are charged with the responsibility of looking into this, and this seems to us to be part of legitimate research, then I am sure all senators would co-operate, and I would think this would be the easiest way of doing it. To go at it in any other way would be just about impossible.

Senator Langlois: There is another aspect, Mr. Chairman, that is much more important than what has been mentioned here today. A very important consideration is whether the senator holds shares in the company. He can be a director without holding shares and might, therefore, have no interest. For example, in my case, I am a policy director of Montreal Life because I am a policyholder. I paid for that policy and I am still paying for it. I am there to represent the policyholders. What crime is there in that? And that is open to any policyholder.

Senator Flynn: I agree that the directorship in itself does not mean anything. It is the holding of shares which is important.

Senator Godfrey: I agree.

Senator Flynn: You might be a director simply because of your legal experience, but that does not put you in a worse position simply because you are a director than it would if you were acting as a lawyer for the corporation.

Senator Asselin: And you would have a retainer fee.

Senator Flynn: Yes, you are paid for your services.

Senator Croll: It will be a matter requiring some explanation, but, after all, we are all in that position.

The Chairman: What will the reaction of senators be if they receive their questionnaire from a committee asking them questions which Senator Croll poses?

Senator Croll: I did not want to ask them the questions; that information is available to us simply by having our research people obtain it.

The Chairman: But the research people cannot possibly get all that information without doing a terrific amount of work. For example, Senator "X" is a director of ten companies. Either you ask the senator in question when he was elected to each of those boards or you write to each of those boards and ask them when they elected the senator.

Senator Croll: You do not need to do that. Once we know that Senator "X" has been appointed to this board, and he knows that he came on in 1972, all you need do is go to the library and pick up the annual report for the company and you have the information.

The Chairman: But where do you find out that he became a director in 1972?

Senator Croll: The annual report for each company indicates the directors of the company for the given year. If he was not a director in 1970 but was a director in 1971, then he was appointed in 1971. All you have to do is look at the annual report. The annual reports are available in the library.

The Chairman: Yes, that is true.

Senator Godfrey: Yes, but you have to remember that a person may not necessarily disclose all his directorships in the directory. For example, at one time I was a director of 40 different companies. I chose only the ten best or high-falutin to put in the Directory of Directors. The others were a bunch of wholly-owned subsidiaries which did not mean anything, really. We never met. I resigned from all of them, except two, when I came to the Senate simply because I did not want reporters playing the numbers game.

In my opinion, our approach should be directed to whether you own any shares, other than as a director's qualifying share, because I do not see any conflict of interest if you have no financial interest in the company but are just there as a dummy director or simple director. Therefore, we should ask what companies a senator was with before appointment to the Senate and any since, and there are any financial interests other than the amount required to qualify.

Senator Flynn: It would be interesting to find out how many more people are appointed to boards after they have left political life.

Senator Croll: That may be.

Senator Laird: That is true.

Senator Flynn: People who have left political life in no time become directors of many boards.

Senator Langlois: Especially former premiers.

Senator Asselin: I think of Jean-Luc Pepin.

The Chairman: What is the technical position now?

Senator Flynn: I have no objection if they want to send a letter, but we should not expect everybody to reply. If you come to the conclusion that the disclosure to be made by senators should mention directorships, that is all right. We can provide for that, always making the distinction that the directorship in itself does not mean much. I think we are all in agreement with that. It is really the shares that you own that count.

Senator Croll: Mr. Chairman, I don't care what shares he owns or does not own.

Senator Flynn: I do care, though.

Senator Croll: Put them in, then. I don't have any objection to putting in the number of shares the person has.

Senator Langlois: It is important, if he has no shares.

Senator Croll: He must have some to be a director.

Senator Langlois: No, that is not true.

With the new Corporations Act it will not be necessary to be a shareholder to be a director.

Senator Croll: All right; So he has none. There may be some other reason for him to be a director. All I want to know is how many directorships the person has acquired since being appointed to the Senate. It is a simple question. I see no reason why anyone would refuse to answer it.

Senator Flynn: And do you want those directorships he has abandoned since, as well?

Senator Laird: I have many I could put in in that latter category.

Senator Croll: I am not concerned with the private business but rather with the public, but if you say yes, then yes.

Senator Godfrey: Well, the private can be far more important than the public. If you are a large developer renting 15 floors to the federal government and you are a private company, that is more relevant than being a public company in many cases.

Senator Croll: All right. Then let us have private and public.

The Chairman: The Directory of Directors does not include private companies.

Senator Godfrey: Yes, it does. You are asked to put in a list yourself.

The Chairman: Then it all depends on what you put in. It is like "Who's Who"; you put in what you want to.

Senator Croll: It may be public or private. Let them put it in, then.

Senator Godfrey: The directory does catch some of the public companies, because they do a cross-reference, generally speaking, and they ask you yourself for the information. If you are a lawyer you like to put in the ones that sound important to your clients.

The Chairman: Is the committee in agreement that we should put this in in order to try to get this information?

Senator Neiman: Mr. Chairman, I will go along with the majority, but I have reservations. I would like to know a little more specifically what purpose there is in gathering this information. I read the article in the newspaper this morning, too. I can see that it is perfectly conceivable that any senator, or anyone else, could be appointed to the board of Campeau for possible connections he might have, which may have nothing to do with the job of being a senator. I think we could be embarking on a witchhunt with people and, unless we know why, I think it would be quite incorrect to assume that the mere fact of being appointed to a directorship, or offered a directorship, must be for some ulterior motive. It may be that the person has some real contribution to offer to the company from experience outside the Senate.

If we are going to proceed in this way, then, of course, I do think the shareholding is important, but only to a certain degree. I think of a friend of mine who held directorships in many major companies, including one of our large automotive manufacturing companies, American-owned. I have no idea how many shares he held in that company, but I am sure it was not that many in terms of a public company. But I know that, for instance, he was offered a limousine for six months at one point during the year and then, six months later, was given a smaller car and received a handsome retainer from the company. In itself that was quite nice for him, but I am sure he was a director of that particular company because he was the director of many other companies and was very influential for other companies. And that is why people are offered directorships. Let's not kid ourselves! I don't think we can really pursue this too far, because I think it becomes meaningless. It has nothing to do just with the Senate itself.

The Chairman: Moreover, the Directory of Directors will not show the number of shares that each senator holds.

Senator Croll: You can ask them.

The Chairman: Whom do you ask?

Senator Croll: You ask the senator in question.

Senator Neiman: You are asking for disclosure in one sense which, I agree, may be valid, and one of the recommendations we will be making eventually will concern disclosure, but I do not think we, as a committee, should go too far in this. It could be resented if we got into this.

Senator Godfrey: The trouble is that newspapers tend to blow up the question of directorships out of all proportion to what the situation actually is.

I find unconvincing some of the arguments given as to why people should not be directors, just as I find equally unconvincing some of the arguments I hear as to why they

should be directors. I know why they do not want to be directors, and it is not usually related to what they say publicly. I suspect that if we find the facts we will find that there are not that many who are appointed directors after they become senators.

Senator Croll: How do you find the facts?

Senator Godfrey: Let us try to find the facts, and if we do not get enough response let us forget about it.

Senator Flynn: There is a suggestion in the question that they got the directorships because they were senators.

Senator Godfrey: We will find out.

Senator Flynn: This time it looks as though you are trying to build a dossier on some people. You can find out all about me in any "Who's Who" or any book of that kind.

Senator Laird: The only trouble with that is, I remember at least once in my life looking at the survey of directors put out by the *Financial Post*, and I found myself listed as a director of some companies I had not been a director of for years. I suppose they got the entry from the year before, the year before that and so on.

The Chairman: Somebody mentioned disclosure. We discussed disclosure briefly the other day. Senator Flynn said that he favours disclosure. The committee of the other place recommended disclosure. However, it is one thing for us to recommend disclosure and for disclosure to be accepted, but it is another thing for us to ask for disclosure in advance. In the report of the House of Commons disclosure was to be confidential. Surely if we are to ask senators to disclose—and this does not affect me because I am not a director—we might be asking them to do something the law does not call upon them to do, but which we might in due course recommend. If the law then calls for it, there will be disclosure.

Senator Croll: That is not my point at all. I am not asking for disclosure. It is a matter of public record which I can get myself.

The Chairman: But not the number of shares held.

Senator Croll: I do not care. I did not ask about the number of shares. It is up to them to say they hold only so many shares. I did not suggest asking about the shares. I am not looking for their business. I wanted to know what directorships they held before being appointed and what directorships they held afterwards. It is a matter of public record which I can get from the library. However, you have your staff, you have people who can easily do the research. All I am asking is that you do the research instead of me doing it myself. If you don't, I will do it myself and then read it into the record. What difference does it make? I don't want you to put me to that trouble.

The Chairman: I was talking to the point raised by senators who said that merely listing directorships is not enough.

Senator Langlois: It is meaningless.

The Chairman: It is meaningless. Therefore, it has been suggested that it is only meaningful if at the same time their shareholding is disclosed. I said that I do not think we can or should ask for shareholdings in companies.

Senator Croll: I did not suggest that.

Senator Asselin: I do not myself think that this committee should be the watchdog of the directorships of any senator. We are now starting into the guidelines of conflict of interest. At the end of our study, if we make a recommendation that all senators should be forced to disclose their directorships, I am ready to go along with that. However, up to now I do not think this committee is the watchdog of the directorships of any senators.

After our study the committee might recommend that every senator disclose to the Clerk of the Senate all his interests in any company, but our study is not yet finished and we cannot in advance tell any senator that this committee is a watchdog and wants to know everything about any directorship he has in any company. I am not at all convinced as to the purpose of Senator Croll's request.

Senator Croll: All I am saying is that if we are going to make a decision on disclosure, it is disclosure of what?

Senator Langlois: We can take the decision at the end of our study.

Senator Croll: Is it a problem or isn't it a problem? Let us see what it looks like.

Senator Langlois: I am in full agreement with my friend Senator Asselin. I ask myself what right we have to this information at this time. What is the need for it? We do not need to know whether Senator Godfrey or anybody else holds shares in a company, whether or not he is a director of a company, to make a decision on disclosure. We do not need that at all, and we have no right to this information. I personally can speak very freely on the subject. If you want to know the number of directorships I have, look at the Parliamentary Guide; I have made full disclosure there and I am not ashamed of it.

The Chairman: As Senator Croll said, it is not secret.

Senator Langlois: I have no right to ask one of my colleagues to disclose information that I have no business to ask of him at this stage.

Senator Neiman: I agree. Now I have talked myself right around and I agree that we are staying with our primary purpose, which is to formulate some guidelines. It does not really matter at this point who holds what directorships. I do not think we should get into that situation at all. It does not matter whether there happen to be two members of the Senate who may be violating some guidelines that we may set at some distant time from now. What we really have to do is establish the principles as we see them at the moment, and not get into obtaining bits of information about anybody. I do not think we should do that.

Senator Godfrey: I guess I have sort of switched around too.

Senator Flynn: I am quite sure that if the committee took that decision the impression would immediately be created that we are trying to get some information, and many will be suspicious of our motives, at this time, in any event. If Senator Croll wants to have typical examples of senators holding directorships, he can find that in many books that are available to him. If he wants statistical information about the number of directorships held by all senators, I do not think that would be useful, and it would be misleading too. If I list all the companies mentioned by Senator Godfrey that are dormant, you just file a report every year, you keep it in your office and do not take the

trouble of putting someone else's name in your place; it does not mean a thing.

Senator Croll: I started out by saying public companies; I was not interested in private companies; that is their business. I wanted to know how many there were in public companies. All I wanted was a statistical record, which is available to anybody who wants it, except that you have to sit down and work through it.

Senator Flynn: Why don't you do it?

Senator Croll: I didn't think I wanted to take the trouble to do it. If I have to, I have to.

Senator Neiman: Some of our senators have been here forty years. Are you going to start back forty years ago on lists of directors to see if any of our senators at that time are listed there? I just do not see the point of it; I really don't.

Senator Langlois: I think we can very well discharge our duty on this committee without giving the impression that we are investigating our own colleagues.

Senator Neiman: Right.

Senator Godfrey: I think we should discuss something else. I think we have beaten this one to death. I do not see that it will be very helpful. I think we should establish principles, and leave it at that.

Senator Flynn: I will give you my list.

The Chairman: We all know that there are senators who are directors of companies. That is a fact. We have to consider the proposals here, which would restrict the directorships of members and senators.

Senator Croll: How can you restrict them if you don't know what you are restricting?

Senator Flynn: You know.

The Chairman: It tells you here what the recommendation about restrictions is. On page 30, Proposal 10 reads:

It is recommended that no Member of Parliament be permitted to participate in the management or direction of a company having a government contract or agreement.

There is a specific recommendation there.

The next paragraph says:

Members should be required to register annually with the Clerk of the House or Senate a list of those companies in which they are officers, directors, or managers.

It is quite specific as to what the restriction would be.

We did raise quite a number of questions about companies which have contracts, with regard to the possibility that you may not know that a company in which you are a director has a small contract with the government somewhere. Senator Godfrey mentioned an example of this the other day, and I can see that this requires further examination as to what restrictions should be imposed.

Senator Flynn: What seems to be recommended in this field, Mr. Chairman, is that no member of Parliament should be a shareholder of a private company which has a contract with the government and, in the case of a public company, no member of Parliament holding 5 per cent or more should be a director of a company.

The Chairman: That is the provision.

Senator Flynn: There is another point, also, that we might have covered. That is the amount of the contract or the business done with the government, by comparison with the total business done by the company. By accident a company may have a contract with the government, or with an agency thereof, and the shareholder would not even know. In other words, if it is an unimportant part of the business of any corporation, I do not see that it should disbar anyone from being a member of Parliament.

Senator Laird: There was also the example that Senator Buckwold gave, if you remember, of the selling of shoes.

The Chairman: These are matters on which this committee will be reporting.

Senator Flynn: I do not think that in order to reach a conclusion we need the information that Senator Croll is looking for, really. It is a problem of principle. Either we do it, or we do not. Either we say it is wrong, or that it is right. Whatever the present practice is is not important, in my opinion, because we do know what the situation is. There is no doubt that the number of directorships held by members of the Senate is rather large, or relatively large; but this may not be all that important.

The Chairman: Senator Croll raised another point the other day when we were reading these proposals. He suggested that we should try to call before this committee the people who drafted the proposals so that they could tell us what they meant by certain phrases they used. I think I am correct in saying that, Senator Croll.

I undertook to talk to Mr. MacEachen, who was the minister at the time this Green Paper was issued, and I will report on that now. I spoke to Mr. MacEachen, who said that these proposals were drafted by two or three people; that they subsequently went to a subcommittee of cabinet, I believe; that there were changes made; and that cabinet finally approved the printing of this Green Paper and its submission to both houses for their views. He said that, accordingly, the people who originally drafted it may not necessarily be the authors of the terms which are now used in it. He did not think it would serve any purpose to call the two or three officials previously referred to.

Mr. MacEachen did say that perhaps the new President of the Privy Council might be able to explain it further. Mr. Sharp did appear before this committee at a session over which I did not preside—it was presided over by Senator Laird, I believe—and I do not think Mr. Sharp indicated that he was in a position to explain everything. Am I right, Senator Laird?

Senator Laird: You are right, actually. I must say, in all fairness, that his knowledge of the subject, and the information he was able to furnish to us, was extremely limited. I hope I am not talking out of turn, but we really did not make much progress as a consequence.

The Chairman: That is why, at the time, he told me that the proper person to call would be John Reid, who was then Parliamentary Secretary to the President of the Privy Council, and he was the principal witness before the house committee. This committee decided, however, not to call John Reid. I am now therefore reporting to you on this matter in answer to Senator Croll's request.

We have now had six meetings on conflict of interest, and of the 25 proposals in this Green Paper we have

covered the first 14. We had reached page 34, proposal 15. Is the committee agreed that we proceed with proposal 15 now? It is an important one. It is headed, "Financial Interests". It reads as follows:

It is recommended that Parliament formalize the hitherto tenuous custom of declaring an interest during debate and during question period and extend this custom to situations previously excluded. The following resolution could be incorporated in the Standing Orders of the House.

In any debate of the House or its committees, or transactions or communications which a Member may have with other Members or Senators or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit, that he may have when that interest or benefit is not shared in common with all other persons or particular groups in society.

It is recommended that a corresponding provision be incorporated in the Rules of the Senate.

Senator Langlois: We have something similar in our rules so far as the debates and committees are concerned, although not necessarily on dealings with public servants.

The Chairman: The house committee proposed a very substantial amendment to this. It is rather long. You have it before you. I can read it, if you wish me to do so.

Senator Laird: Where is it found?

The Chairman: It is on pages 616 and 617 of the House committee report.

Senator Flynn: Can you summarize, Mr. Chairman?

The Chairman: The principal recommendation is that the proposal with respect to financial interests be expanded to include the office of the registrar, whose existence is intended to ensure the public of the determination of members of Parliament to avoid potential or actual conflict of interest.

The functions of the registrar would be—and I am summarizing—registration of an annual statement of the pecuniary interests of each member of Parliament, and the making and filing of records pertaining thereto. The registrar would also provide confidential advice to members of Parliament at their request on any matter that may concern a possible conflict of interest.

Another function of the registrar would be the annual reporting to the House of Commons of a list of those members who have complied with the requirements of the law relating to registration and/or disclosure. The disclosure recommendation is as follows, and this I will read. I think I read it at the last meeting.

Every Member of Parliament shall, within six months of assuming office and on May 31st of each year thereafter, file with the Registrar, the following information, together with such additional information as the Registrar may require:

- (1) his or her taxation returns for the year current or preceding;
- (2) his or her financial and pecuniary interests, direct or indirect, of every kind and nature whatsoever, including such interests of the Member through his or her spouse and/or dependent children, as well as trusts of which he

or she or his or her spouse and/or dependent children are the trustees or beneficiaries.

Senator Flynn: Is that in lieu of the recommendation?

The Chairman: It is further to this recommendation. It also recommends:

... that statements of financial interests made by Members of Parliament pursuant to the requirement for private registration, as opposed to the requirements for public disclosure... shall be deemed to be absolutely confidential to the Registrar and shall not be made public except under the provisions of a court order or upon a request made to the Registrar by the Standing Committee on Privileges and Elections pursuant to a specific reference to the Committee by the House of Commons involving an allegation of conflict of interest.

It further recommends that written advice given by the Registrar to a member of Parliament who seeks his advice may not be made public except at the instance of the particular member of Parliament;

... and the Registrar shall be prohibited from disclosure of any such verbal communications between himself and Members of Parliament.

It says, in addition, that:

... verbal advice given by the Registrar to a Member of Parliament shall in no way constitute a defence either in a court or before Parliament.

Then the committee recommends that it considers it desirable that the registrar issue a set of forms and information for the benefit of members of Parliament.

Senator Laird: Mr. Chairman, I wondered whether you had arrived at an interpretation of whether or not they mean disclosure of every transaction?

The Chairman: Well, this does not refer to transactions; it refers to financial and pecuniary interests, direct or indirect. That would mean full disclosure of a senator's financial and pecuniary interests and production of his or her taxation returns annually.

Senator Langlois: What has the taxation return to do with conflict of interest? In my view, it has no relationship at all.

Senator Laird: But in your income tax return, if you buy or sell some stock, it all appears there, and then that is disclosure of transaction.

Senator Neiman: Perhaps that is how they are getting at it, rather than asking for separate reports on each transaction.

Senator Laird: But that violates a fundamental principle that has always existed ever since the income tax was brought in, and that is that information filed in an income tax return is sacred.

The Chairman: Well, Senator Laird, this is not in the green book. It is in the report of the House of Commons committee, and I think we should take note of the house committee recommendations. Whether we agree with them or not is another matter, but I think we should take note of them.

Senator Godfrey: I would like to take issue, to some extent, with Senator Laird's saying that whatever is contained in an income tax return is sacred. The copy that is

filed with the department is certainly sacred, but it has never been considered that the copy that you retain is sacred. Such copies are subpoenaed all the time. So if some law comes along that says that it is very convenient if instead of putting in a return of all your sales and purchases of securities during the year, you file your income tax return, there is nothing fundamentally wrong in that. Whether it is necessary or not is another question.

Senator Laird: But it does violate another principle which I have had to deal with in cases that I have been involved with on behalf of clients. That is where one division, namely the Taxation Division of National Revenue, had information which—due to the presence of RCMP officers in connection with the opening of a safety-deposit box—then was conveyed to the other branch of the department, namely Customs and Excise, on the strength of which they started a prosecution. I never saw anybody so embarrassed as the Taxation Division officials who came to my office to apologize and said, “We realize this violates all the principles we operate under, and we are terribly sorry,” but it happened to be the same law-enforcement group, namely the RCMP, who had been in attendance for both branches of the department, and they were the ones who acquired the information and passed it on to the Customs and Excise Division.

Senator Neiman: I agree, Mr. Chairman, with the idea of the appointment of a registrar. I also have a feeling that we are going to have to go the disclosure route eventually when we are drafting or arriving at a set of guidelines. Whether these specific proposals are the best, I cannot say at this time, because I have not had a chance to study them in detail. But I feel that this is possibly the better way of approaching the problem of trying to enunciate some guidelines for everyone. I can see the registrar, if a registrar should be appointed, acting as a guide and referee and giving advice and guidance to many members, but for what purpose are these papers and this information going to be filed? What use could possibly be made of it? I have no objection to filing this information personally, but we should know what use would be made of this information, by whom and under what circumstances.

The Chairman: Presumably this information would be relevant if there was a charge of conflict of interest against a member of Parliament.

Senator Neiman: But, then, who would have access to it? I think this was discussed during the course of the debate. But I would like to know, supposing this information is on file, and supposing a member is charged with conflict of interest, who is going to make the decision as to whether in fact there has been such a conflict or there has not been such a conflict. Do all his confidential reports then become public and are they then debated in the House of Commons while everybody decides whether or not there is a conflict of interest?

The Chairman: The recommendation, as I read it, is that this information shall not be made public except under the provisions of court order or upon a request made to the registrar by the Standing Committee on Privileges and Elections pursuant to a specific reference by the committee of the House of Commons involving an allegation of conflict of interest. I would presume that if it were a court order, the court would decide how much of that information should be made public. I cannot say that that is definitely the case, but that is what I would presume; and I would also presume that the same would apply if there was

an order by the Standing Committee on Privileges and Elections. It would depend on the circumstances of each case. That is the only answer I can give.

Senator Neiman: All I am saying is that I think we should think this through in more depth before we decide that this proposal is worthwhile.

The Chairman: As I have said before, we are going through this carefully now but there is no finality about it. We are not making decisions at this point. When we read the proceedings and the documents which our research adviser will prepare, we can then begin formulating the consensus of the committee on each proposal.

Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel: Senator Neiman, were you talking about the proposal made by the House of Commons?

Senator Neiman: Yes.

Mr. du Plessis: In the report that this committee will ultimately be making, it will probably be a good idea if the committee indicates where it agrees with proposals made by the House of Commons and where it disagrees, so that that can be considered by the government, because if the government knows that the Senate endorses certain policies proposed by the House of Commons, surely that will be useful information. If it knows that the Senate disagrees, that is also useful information for the government.

Senator Langlois: And it should also know the reasons for any disagreement.

Senator Neiman: Or any alternative proposals.

Senator Godfrey: I am not too impressed with the idea of filing away a lot of information to be kept confidential and only to be used in the event of someone making an accusation. That is certainly not the theory behind proposal 15. The proposal has a good intent, to the extent that it does not prevent anyone talking about something or even voting on something if he has a possible conflict of interest. In effect, it encourages people to disclose their interests and then go ahead and talk about the matter and even vote on it. In other words, it tends to have wider disclosure so that if you ever have a doubt about a particular question you can mention it without being stopped from discussing the matter and voting on it. That is a good concept. Sometimes it is quite obvious what a person's interests are and there is no need for particular disclosure. For example, when Senator Lawson speaks he does not have to disclose that he is a union official. Everybody knows that. But there might be others whose interests are not generally known.

Senator Langlois: In view of what Senator Godfrey has said, perhaps our legal adviser could refresh our memories as to the rules of the Senate in this respect.

Mr. du Plessis: Rule 75(1) reads as follows:

75.(1) A senator who has any pecuniary interest whatsoever, not held in common with the rest of the Canadian subjects of the Crown, in the matter referred to any select committee, shall not sit on such committee and any question relating thereto arising in the committee may be determined by the committee, subject to an appeal to the Senate.

Senator Croll: What is the situation when the bill comes before us to increase our pensions? We do not hold that in common with the rest of the country.

Mr. du Plessis: In that respect, rule 49 may be of interest. Rule 49(1) (b) reads as follows:

49.(1)(b) a senator shall not be entitled to vote upon any question in which he has any pecuniary interest whatsoever, not held in common with the rest of the Canadian subjects of the Crown, and the vote of any senator so interested shall be disallowed;

Senator Croll: Then not only am I caught on pensions but I am caught on veterans' pensions and, on top of that, I am caught on the annuity as well.

Senator Asselin: So resign!

Senator Croll: That was easy! What is our position on that, Mr. du Plessis?

Senator Godfrey: I discussed all of this in my speech on the salaries bill. Precedents and common sense can overrule plain language.

Senator Croll: It is very nice to hear you say that, but don't charge me for that advice. But what does the rule mean? It seems meaningless to me.

Senator Flynn: It is too wide. It would be better to refer to the particular group concerned. "With all other persons or particular groups concerned." As you have it here it is too wide. The particular group in this case would be the Senate. You have the same interest as any other senator, Senator Croll.

Senator Croll: The problem is the words "in common," or "particular group in society." We do not all share the group. For instance, how many share the group on the annuity? I am an annuitant and they are changing the annuity.

Senator Flynn: You hold it in common with all of the annuitants.

Senator Croll: But they are not in the Senate.

Senator Flynn: That is the point. The rule should not be as contained in rule 49 but should be according to proposal 15, which is "not held in common" with all other persons or particular groups concerned. The Senate is concerned with something. Farmers are concerned with something, but Senator Argue does not ask for a farm bill to be passed for his interest alone; it is for all farmers of Canada. The same thing holds true for annuities in the Senate: it is not only for you, but also for your successors.

The Chairman: And the annuities were open to every citizen of Canada; they were available to every citizen who could afford them.

Senator Croll: But they are not in common with them.

Senator Flynn: It is in common with the group concerned with the legislation in question. That is the principle which has been defined in other rules I have seen, such as in municipal law or anything like that.

Senator Neiman: We are not talking about adverse interests. The idea is that you declare adverse or particular interests. If we are all discussing a raise in salary or an annuity, it is a common interest. It is quite different. There is no problem there of an adverse interest or an interest that might be inimical to everyone else in the group. That surely is not the problem.

Senator Godfrey: To return to proposal 15, the word "particular" bothers me. We have mentioned particular groups in society. I think the word "general" should be used.

Senator Flynn: You could say, "the group concerned in the legislation."

Senator Godfrey: Or something general rather than having it a small, narrow group.

Senator Flynn: This proposal is curiously drafted, to say the least. Have you noticed that if one senator makes a contract with another senator they must disclose their interest? It says "transactions or communications which a Member may have with other Members or Senators..." In other words, a senator who has a contract with another senator must disclose his pecuniary interest.

Senator Asselin: If you were to lend me some money, you would have to disclose that fact. It is a contract.

Senator Godfrey: In the second sentence of the explanation it says that "it is expected that others will be encouraged to declare their interests and speak out on a matter knowing that this is an accepted practice."

Senator Flynn: There are some obvious cases. For example, if I make a transaction with you, you should know what interest I have in it and I should know what interest you have in it. If I write to a minister, as a lawyer for a company, it is obvious that my letter will show him my interests. Of course, if I am a shareholder of the company which I represent, then I should disclose that fact. But there are other things that are obvious.

Senator Godfrey: Right.

The Chairman: Is it the suggestion that we agree with proposal 15 subject to some restrictions, particularly with respect to the expression "particular groups in society"?

Senator Godfrey: Yes

Senator Flynn: We should clarify whether they intend to apply that to transactions between two members of the house, or private transactions.

Senator Laird: Yes. For example, yesterday afternoon Senator Croll and I agree to split the taxi fare in from the airport.

We do not want to be prevented from doing that sort of thing.

The Chairman: I did that with Senator Bourget last night.

Senator Asselin: I do it continually with Senator Langlois.

Senator Langlois: Every week. We should make full disclosure!

Senator Neiman: I agree with Senator Godfrey that this rule really covers a particular situation that will arise, perhaps very often. The proposal of the House of Commons committee covers a much broader area and should be a separate one. I think we still need a provision such as is suggested in proposal 15, with some modification.

The Chairman: The house committee made its recommendation under the heading "Financial Interests," which

it is. However, these are really two separate proposals. Proposal 16 is also under the heading "Financial Interests":

It is recommended that the present practice, set out in Standing Order 11, of the House of Commons, whereby a Member who has a direct pecuniary interest in any matter before the House of Commons is prohibited from voting on any question regarding this matter, be retained.

It is recommended that Rule 49(1)(b) of the Senate which is similar to Standing Order 11 of the House of Commons also be retained.

Senator Neiman: That rule is very badly worded. I would suggest we recommend to Senator Molson that that be redrafted. I do not like the wording.

Senator Flynn: We have had examples in the Standing Senate Committee on Banking, Trade and Commerce of senators who are on the boards of existing banks declaring that they may have an interest in the bill under discussion, which I doubt; anyway, they say so and they say they will abstain from voting. The rule seems to go further than that and says they should not participate. I think one of the rules says that he shall not sit.

Senator Langlois: I think rule 75 says that.

Senator Croll: What does it say?

Mr. du Plessis: It says:

A senator who has any pecuniary interest whatsoever, not held in common with the rest of the Canadian subjects of the Crown, in the matter referred to any select committee, shall not sit on such committee and any question relating thereto arising in the committee may be determined by the committee, subject to an appeal to the Senate.

And rule 49(1)(b) says he is not entitled to vote in the Senate.

Senator Flynn: Rule 49 applies to the Senate; the other applies to the committee.

Mr. du Plessis: That is right, rule 49 applies to the Senate.

Senator Flynn: Anyway, abstaining is sufficient.

Senator Neiman: We should recommend that those rules be checked and changed while we are looking at the rules right now.

Senator Flynn: He would not be able to disclose his interest in the committee, because the rules says he shall not sit.

Mr. du Plessis: He cannot sit in committee.

Senator Flynn: He cannot even disclose if he is not present.

Senator Langlois: He could disclose before he comes in.

Senator Flynn: In the hall.

Senator Laird: That is weird.

The Chairman: The last proposal under the heading "Financial Interests" is Proposal 17;

It is recommended that a further resolution be incorporated in the Standing Orders of the House of Com-

mons which would require Members of the House of Commons to exercise care in the management of their private investments so as not to benefit, or appear to benefit, from the use of information which may have been made available to them on a confidential basis. The resolution could read as follows:

In managing their private investments, members of the House should exercise care to ensure that they do not benefit, or appear to benefit, from the use of information which may have been provided to them as members on a confidential basis.

It is recommended that a similar provision be incorporated in the Rules of the Senate. What is the benefit there? Is it an electoral benefit? Is it a benefit if you inform some of your constituents of some impending amendments to legislation?

Senator Godfrey: I think it is going into the market and buying stock.

Senator Flynn: He is not concerned with his own investments, but the person to whom he divulges the information has a pecuniary interest. It is very difficult.

Senator Langlois: Why limit it to confidential information?

Senator Neiman: Mr. Chairman, perhaps you will remember when we looked at a bill concerning the Department of Indian Affairs and Northern Development; it concerned people working in the north. It came under Mr. Buchanan's department. It was limited strictly to people employed by the Department of Indian Affairs and Northern Development, people who might acquire information because of their employment. At that point we questioned why it was limited, why the same type of prohibition, if there needed to be one, should not apply to any civil servant or anyone employed by the government. I think we ended up by just amending that bill, because it had always been there and they wanted to be sure that it was continued for that particular department. I believe at that point someone said that another law was being drafted that would be of general application to all government employees, which would seem to cover this type of situation. In other words, it is a question of our having access to information from which we could make some capital gain in any capacity, in the capacity of a member of Parliament or a civil servant. I think they drafted a new law.

Senator Flynn: The principle here is that if you obtain information ahead of the general public you should not use it for your own benefit or for the benefit of anyone else.

Senator Godfrey: Whether it is confidential or not.

Senator Flynn: That is the sensible rule. You may acquire information which will not benefit you but may benefit someone else, but I think the fault is as serious.

Senator Asselin: I think that was the Reid case.

Senator Flynn: It may have some relation to the Reid case, but it is very difficult to determine what is a benefit, what is confidential information and what is not. It is information made available to you before the public at large, which you obtain because you are a member of the house or of the Senate.

The Chairman: Or a member of the Cabinet.

Senator Flynn: Of course, that is already there.

The Chairman: I say that advisedly, because there was the case in 1924-25, when a member of the Cabinet learned that a bank was going to be closed down, and he walked out of the Cabinet meeting to the bank and withdrew his deposit.

Senator Godfrey: The Home Bank.

The Chairman: The Home Bank.

Senator Croll: But they did nothing about it.

The Chairman: They did nothing about it,

Senator Godfrey: Things have changed since then.

Senator Flynn: There is the tradition of the house with regard to the Minister of Finance, for instance. If there is any leak he has to resign. You will remember the case of Walter Gordon and his advisors some years ago. There was quite a debate on it at that time. In England the Chancellor of the Exchequer resigned because he spoke to somebody about a change in the tax on cigarettes before his budget speech.

The Chairman: That was Hugh Dalton.

Senator Croll: Gordon was different; Gordon explained it away.

Senator Flynn: I know, but the question was raised that some people had been made aware of what would be in the budget.

Senator Godfrey: I think Senator Langlois' point, that it should not be confined to confidential information, was a good one. We could be in a position to know information ahead of the public. The information may not percolate down to Toronto for several weeks, but you could buy stock.

Senator Flynn: It may be information you acquire because you are a member.

Senator Godfrey: Which is quite different from information acquired on a confidential basis.

Senator Flynn: The answer is that you should not use it for your own benefit or for the benefit of anyone else. In fact, it should not be divulged at all before it has become public.

Mr. du Plessis: I am wondering if this could properly be incorporated into the rules of the Senate. It seems to me that the purpose of the rules of the Senate is to govern proceedings in the Senate or in any committee thereof. This is a rule governing conduct.

Senator Flynn: It may also apply to how a senator should govern himself.

Mr. du Plessis: The rules are really meant to apply to proceedings in the Senate. This is a very general statement of principle governing the conduct of a senator, though not necessarily in the Senate; so this is something we will have to consider.

Senator Flynn: We could add another heading, because the rules of the Senate do not mean only conduct in the Senate.

Mr. du Plessis: I wonder if there are any examples of rules that apply outside of the proceedings?

Senator Flynn: We just have to have them.

Senator Godfrey: Yes. We are not bound by this.

Senator Flynn: On the other hand, of course, if you were to include in the rules of the Senate other rules governing conflict of interest, some of them would not apply within the Senate. For instance, a contract is something that happens outside the Senate. I know that at present such provisions are to be found in the Senate and House of Commons Act, but if you were to supplement them in the rules of the Senate, they may deal with something that does not happen either in the Senate or in a committee of the Senate.

Mr. du Plessis: It is really a question of procedure that I am interjecting here. Perhaps a provision of this kind could be incorporated in a motion that could be agreed upon by the Senate.

Senator Flynn: Yes, as part of the rules: "Behaviour of the Senate"—something like that.

Senator Neiman: I really do not think that rule, as it is suggested here, goes far enough, in a sense. It just says, "In managing their private investments." I think, really, what we are talking about is a far more general principle. As someone mentioned earlier, members do not divulge any information to anyone. I could very well pass some information along to a friend or relative, but that would not then be covered.

Senator Godfrey: Spouses should be covered.

Senator Neiman: I think what we what is a far more general rule, that we simply do not divulge information which we obtain by virtue of being a member of Parliament. Perhaps that is a little too broad, but I think this is really what we are getting at. We want to cover any type of information that might enable someone to acquire a benefit that they would not otherwise obtain. I am not quite sure what the wording should be at this point. As it stands at the moment, however, I do not think this covers the situation we are concerned with.

Senator Langlois: Would you not achieve what you have in mind by simply striking out the opening words of this paragraph? "In managing their private investments", and starting with "Members of the House," and so on?

Senator Neiman: Yes, and going on with "... that they do not benefit, or appear to benefit, or provide other people with an opportunity to benefit, from the use of information ..." and so on.

It should not only refer to members of Parliament themselves. I do not know how far we should go. I would say we should take that first part out, certainly, but I think the rest has to be amended a little as well, by saying something like, "... they or members of their family ..."

Senator Langlois: "... that they do not benefit, or appear to benefit..." That includes members of your family.

Senator Flynn: "... benefit or allow anyone else to benefit from ..." and then that would cover not only members of your family, but a friend to whom you could give information enabling him to make a pass.

Senator Godfrey: Then you would be getting much too wide, because your duty as a member of Parliament is to pass along to your constituents all of the information they can get.

Senator Flynn: We mean before it is made public.

Senator Neiman: Leaking information that may allow somebody some sort of pecuniary benefit that they otherwise would not get is what we are concerned about.

The Chairman: Well, Mr. du Plessis will try to draft something embodying our ideas as to amendments concerning this particular aspect.

Mr. du Plessis: Yes, and put it out to be considered by the committee and torn apart if necessary.

The Chairman: Do we want to go on now to the last section, which is sanctions and recommendations?

Hon. Senators: No. Mr. Chairman.

The Chairman: In that case, we will now adjourn until after the Senate rises on Tuesday next.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada



Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

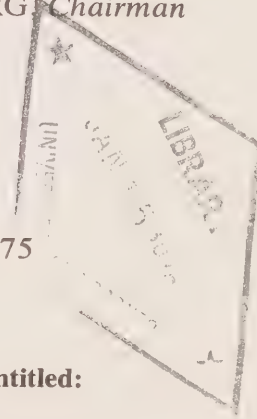
THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG *Chairman*

Issue No. 29

TUESDAY, DECEMBER 2, 1975

Sixth Proceedings on the Green Paper entitled:
"Members of Parliament and Conflict of Interest"



THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 10, 1975:

With leave of the Senate,

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Petten:

That the Green Paper entitled "Members of Parliament and Conflict of Interest", tabled in the Senate on Wednesday, 9th April, 1975, be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, December 2, 1975.

Pursuant to adjournment and notice, the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Croll, Flynn, Godfrey, Laird, Langlois, Robichaud and Smith (*Colchester*). (9)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its examination of the Green Paper entitled "Members of Parliament and Conflict of Interest", with particular reference to Part IV headed "Guidelines and Proposals for Change".

At 3:45 p.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard.
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, December 2, 1975

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 2.30 p.m. to consider the Green Paper entitled "Members of Parliament and Conflict of Interest."

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, we agreed at our last meeting to complete the reading of the proposals in the Green Paper. We had reached proposal 18 entitled "Sanctions and Administration."

Senator Flynn: Mr. Chairman, may I ask if the committee is going to restrict itself to the examination of the remaining proposals, and especially this one; you are not going to go back to the other proposals?

The Chairman: I was about to say, Senator Flynn, that we have now a series of answers to some of the questions raised by committee members. I would very much like to have the committee take a look at these.

Senator Flynn: Are these replies?

The Chairman: Yes. At the last meeting, at the insistence of some senators, I said we would sit for about one hour to complete the reading of these proposals.

Senator Flynn: That is what I wanted to know, because I really would like to go to the Banking, Trade and Commerce Committee which is considering Bill C-73. I have no particular feeling about the remaining proposals.

If you are not now referring back to the other ones, I would appreciate being excused. If you are going to refer to some of the other problems, I will stay.

Senator Croll: We are going to have one more sitting, are we not?

The Chairman: Before Christmas?

Senator Croll: Yes.

The Chairman: Senator Laird objects.

Senator Croll: We will leave it at that. I want to raise certain problems, but I will wait until Senator Laird is present or until after we return.

Senator Godfrey: Excuse me, but I understood about two or three weeks ago we skipped proposal 3, on the understanding that we would revert to it later.

The Chairman: We intend to.

Senator Godfrey: If not today, we will at some other time?

Senator Croll: We will come back to all these proposals.

Senator Godfrey: Regarding proposal 3, we never quite got far enough with that. We left it open to come back to it, so the staff could be working on it. I think we should discuss that today so they can be working on the balance of it in our absence.

The Chairman: Senators, I am prepared to do that, but I think the committee decided the other day that we would complete reading the remaining proposals and then adjourn.

I believe everyone has a copy of this document which Mr. Finsten, our research adviser, has prepared in an attempt to answer the various questions raised on proposal 3.

Senator Godfrey: Do you mean this document?

The Chairman: It was made available just today.

Senator Godfrey: We did not have it this morning.

The Chairman: No. You had the original report but this is a revised one. It was only made available this morning. The first six pages cover questions raised in connection with proposal 3.

Senator Flynn: This is a very vast subject. It is, of course, the crux of the problem.

Senator Croll: That is right.

Senator Godfrey: When we were discussing this matter last week, we thought the Senate might meet on Monday night and Tuesday afternoon. Now, as it turns out, the Senate is not meeting until this evening, so we have the afternoon.

Senator Laird: You may have the afternoon, but I have another two committees I am supposed to be attending.

Senator Croll: You are not going to conclude today, Mr. Chairman, whether we have the afternoon or not. Perhaps, Senator Godfrey, you can meditate about it.

Senator Godfrey: I was just concerned about spending a few minutes on proposal 3. We were not discussing it last week; we had gone on to other matters. I believe it was two weeks ago when you said, "this is not to be publicized, or anything, until we come back to discuss it, which will be next week."

The Chairman: You are quite right, but then the committee decided we would go ahead with the proposals. If the committee would prefer to take up the answers to the questions raised on proposal 3, we can do it now.

Senator Flynn: We have only just received these and they require some consideration. I have no objection to

the committee, after completing a study of the remaining proposals, coming to this. However, I hope that no decision will be made on this now and that it will remain open for the next meeting, whenever it takes place.

The Chairman: Absolutely, Senator Flynn; no decision has been made on any one of the proposals.

Senator Flynn: I know, but the discussion of these items requires prior study. I do not mind a preliminary discussion, but I think we should have to leave it to another meeting.

The Chairman: I suggest that we finish reading these proposals, which would accommodate those senators who feel that they must attend another committee. Senator Laird made it clear on Tuesday that he could not attend any further meetings before Christmas, and I asked our research adviser to draft some ideas after we adjourn today. At the first meeting after Parliament resumes I propose to take up this document, the response to questions with respect to the various proposals dealt with there. I would like the members of the committee to read this before then.

Senator Croll: And any further documentation that comes from either source will be further Christmas reading.

Senator Flynn: Mr. Chairman, I meant that we would complete the underbrushing of the whole thing.

The Chairman: That is right.

Senator Flynn: And then resume with the ideas which will have been expressed and the information received from our research staff.

The Chairman: That is entirely what I had in mind, so we will start with that when we resume after the holiday. We will take proposal 18. It reads as follows:

It is recommended that the Attorney General of Canada be charged with the enforcement of the provision of the "Independence of Parliament Act". In addition, members of the public should be able to request the Attorney General to commence legal proceedings against a Member of Parliament if it is believed a Member has violated the provisions of the Act. If the Attorney General refuses to commence legal proceedings, for whatever reason, any member of the public may make application to the superior court of the Province, from which the Member of the House of Commons was elected, or Senator appointed, for a declaration stating that the Attorney General has failed to commence legal proceedings. Upon such application, the court should be empowered to make such a declaration and forward a copy of it to the Speaker of the House of Commons or Senate and the Attorney General of Canada.

Are there any comments?

Senator Croll: The courts should be empowered; I see. Isn't that the present law—

The Chairman: I do not believe so.

Senator Croll: —that proceedings shall be taken by the Attorney General against a member in violation of the

Act? Mr. du Plessis, would you please give me a violation of the act that could be covered in that provision?

Mr. R. L. du Plessis, Acting Assistant Law Clerk and Parliamentary Counsel: A violation of which act?

Senator Croll: It refers to the "Independence of Parliament Act."

The Chairman: That is the discussion draft that we have at page 39.

Senator Croll: However, what precludes a member of Parliament who commits an offence from being dealt with by the courts?

Mr. du Plessis: We have some offences under clause 12 of the model bill. Perhaps we could take a look at those.

Senator Laird: If I understand Senator Croll correctly, his question was concerned with whether this procedure exists now under the Senate and House of Commons Act.

Mr. du Plessis: Certainly action can be taken for offences committed under the Criminal Code.

Senator Croll: What does this mean if a member can be charged under the Criminal Code? That is, of course, what I had in mind. What offence could he commit that would not be covered under the Criminal Code, except voting wrongly?

The Chairman: I notice that section 23 of the existing Senate and House of Commons Act, at page 54 of the green book, provides as follows:

(1) No member of the Senate or of the House of Commons shall receive or agree to receive any compensation, directly or indirectly, for services rendered, or to be rendered, to any person, either by himself or another, in relation to any bill, proceeding, contract, claim, controversy, charge, accusation, arrest or other matter before the Senate or the House of Commons, or before a committee of either House, or in order to influence or to attempt to influence any member of either House.

The next paragraph, section 23(2) provides a penalty of a fine of not less than \$1,000 and not more than \$4,000.

Senator Croll: Yes, but that is not new.

Mr. du Plessis: In my opinion, the one new point about this would be the fact that it probably, as explained in the explanation for proposal 18, will act as a check upon the Attorney General to ensure that he carries out his duties impartially and in full knowledge that pressure may be brought to bear upon him by the public and the courts should he fail to do so. This is perhaps one of the new aspects of it.

Senator Croll: But in the present circumstances I can go before a justice of the peace and lay a personal charge, except that sometimes it would be found to be frivolous and not allowed.

Mr. du Plessis: It goes on to provide that at the same time it is intended to protect the individual member of Parliament from unfounded allegations and court actions over which he often has no control.

Senator Smith: It does not read very much like that if the intention were to be achieved; it looks as though it was deliberately framed to allow the most frivolous of complaints to be brought before a judge.

Senator Greene: Also, it operates *ex parte*. It bothers me that the application before the judge can be brought by—

Senator Langlois: Any crackpot in the country.

Senator Greene: And it is *ex parte*; at least the member should have notice an opportunity to appear.

Senator Croll: Why do you say "*ex parte*"? It says, "Upon such application, the court"—it does provide for an application. I would gather someone would have to give notice to someone else and the court should be empowered.

Senator Langlois: Mr. Chairman, I fail to see the reason for this check against the attitude of the Attorney General of Canada who, after all, is responsible to the House of Commons, the elected representatives. Have we lost confidence in our ministers to that degree, that we would give the right to any crackpot to check on the Attorney General? Who is a better judge than the Attorney General of Canada to decide whether an offence has been committed, if there is valid evidence to sustain that offence?

Senator Croll: But you must go to the court.

Senator Langlois: Yes, but to initiate such a declaration is sufficient to destroy anyone's reputation.

Senator Greene: It is a public document and the Attorney General has stated that he refuses to prosecute the offender, so he would probably be stigmatized right there.

Senator Langlois: The action should be commenced with the elected representatives.

Senator Smith: It would have to be done in good faith.

Senator Langlois: There is no such provision contained in this.

Senator Buckwold: It is interesting to note that on page 36 where the proposal is explained, it is said that it is also for the protection of "the individual Member of Parliament from unfounded allegations and court actions over which he often has little control." I would think this is a protection, in the sense that the provincial court has to make up its mind before anything further happens.

Senator Smith: Mr. Chairman, I take precisely the opposite view. Once you get into court, you are privileged. You can make any allegation that springs to mind, and no one can sue you for it. This allows a person with malice, and certainly complete lack of good faith or reasonable and probable cause, to go into court and make the allegation. It may be a most destructive allegation, and he may not even believe it himself.

The Chairman: I suggest that we take a look at clause 16 of the discussion draft of the Independence of Parliament Act, on page 46, which spells it out:

Where a person has reasonable grounds for believing that the Crown has a cause of action against a Member or Senator for an offence or for recovery of a debt due to Her Majesty under section 13 and that the Attorney General of Canada has failed or refused to institute legal proceedings against the Member or Senator, that person may make application to a superior court of the province.

(a) where the electoral district from which the Member is elected, is located, or

(b) from which the Senator is appointed, for a declaration that there exists

(c) evidence sufficient to justify prosecution of the Member or Senator, for an offence against this Act, or

(d) evidence sufficient to justify the institution of legal proceedings against the Member or Senator, for recovery of a debt due to Her Majesty under section 13.

Senator Croll: What do we have to do with debts here? Let me look at clause 13.

Senator Godfrey: Proposal 18 is poorly drafted.

Senator Croll: Since when can any man sue for a debt without anyone's permission?

The Chairman: If you look at clause 13, it says:

(a) any profit derived by him from participating in a government contract in contravention of this Act, and

(b) any salary or other remuneration received by him from holding an office, commission or employment in contravention of this Act,

Senator Croll: Yes, I see.

The Chairman: If you will notice, subclause (2) of clause 16 says:

An application under subsection (1) —which I have just read—

shall be dismissed upon the filing with the court by the Member or his solicitor, or the Senator or his solicitor, as the case may be, of a certificate issued by the Attorney General of Canada certifying that legal proceedings in regard to the alleged cause of action have been commenced by him against the Member or Senator.

Senator Smith: That does not help.

Senator Greene: That clearly indicates that the proceedings are by nature *ex parte*. There is no right to cross-examination, to confront the accuser. Surely that is contrary to our—

Senator Croll: Once he appears before the court, the court takes the necessary procedure. It has been known that for political purposes, the Attorney General or the Solicitor General will not take proceedings. He says "No." Where a man thinks he has the right to have proceedings taken, we cannot deprive him of that right. The courts are usually pretty careful about protecting someone under cross-examination.

Senator Greene: An old labourite like you would remember the *ex parte* injunction.

Senator Godfrey: No one would proceed *ex parte* under clause 16. If there were any danger, we would have to change it in our recommendations.

Mr. du Plessis: We have to remember that it is not the beginning of an *ex parte* action against a member. As clause 16 reads, it is an application for a declaration that there exists evidence to justify action.

Senator Greene: Which in itself is an indictment. If the judge issues the declaration, whatever happens from there on, the member is finished.

Senator Smith: Mr. Chairman, I come back to the point I made earlier, that once someone says something in open court, under a procedure which enables him to get there lawfully, he is privileged and he can say what he likes, be it the most slanderous and horrible things, without, so far as one can tell from this, fear of any great retribution. Who will resist him? Is the member or senator going to be a party? It does not say so.

Senator Greene: It rather negates that a member is going to be a party, because it says he can stop the proceedings before the judge if he can file a certificate that the Attorney General has commenced prosecution against him. The fact that that is an exception, surely negates he has any other rights.

Senator Godfrey: I was shaking my head at Senator Greene's last statement. It is obvious from subclause (2) that they have provided that a member or his solicitor will be before the court. Anyhow, we are wasting our time talking about it. All we have to do is put in "by notice".

Senator Croll: What stops a man from making a frivolous motion, one that is not worth anything, and having his lawyer appear and make the most outrageous suggestions about what happened? It is all a matter of record.

Senator Smith: It has never been done in a purely political sense. This looks like an invitation for any ill-natured, spiteful person to come into court and get after a politician he does not like.

Senator Godfrey: There was the case of a distillery company in Ontario. The members got hold of it and they alleged all kinds of iniquitous things.

Senator Smith: I do not have any personal knowledge of that. My concern is that this is really an invitation to a political enemy to go out and, with impunity, make any allegation he wants against an elected member or senator.

Senator Greene: Without the right of putting him to the test in the normal procedures. We should at least have the right to be represented and cross-examine. I do not see any right here at all.

Senator Smith: There could be a change to make it clear that any member of the public has the right to make a charge against the elected person and has to face him. That would be a little better.

Senator Croll: Where did this come from? It seems strange to me.

The Chairman: I do not know of any precedent.

Senator Croll: Perhaps that could be researched.

Senator Godfrey: A lot of things start in Parliament. Parliamentarians can get up and make the wildest allegations, and then sit down, and that is it. Here a person who makes an allegation might very well be a member, but he is forced to go before a judge and make those allegations; and the judge can say, "You have not got proper or sufficient evidence to justify prosecution." There is protection when a person has to go before a judge.

Senator Greene: You can either resign your seat or withdraw the allegation.

The Chairman: Is there the suggestion that there be added the words "upon notice"?

There was a second suggestion by Senator Croll regarding which our research adviser can perhaps determine whether there is a precedent.

Senator Godfrey: If I may make one further suggestion, proposal 18 is so poorly drafted, it does not reflect what is set out in clause 16. If what is really meant is clause 16, then proposal 18 should be completely redrafted. The concept embodied in proposal 18 is not clear unless one looks at Clause 16.

The Chairman: That is why I referred you to clause 16.

Senator Croll: Mr. Chairman, I am not sure whether it was in the British study or the American study, but this situation was discussed. It seems to me it may have been in the British study. Perhaps our research assistant can locate that discussion and report back to us.

Senator Laird: Mr. Chairman, I hope Senator Croll's recollection is accurate. This introduces a new concept, as nearly as I can figure out, and it has all of the dangers that Senator Smith has pointed out. He has pointed out a very real danger, and I would certainly like to know whether any other jurisdiction has ever legislated along these lines, or whether it is some bright person in our own jurisdiction who has come up with this concept.

Senator Croll: Don't misunderstand me. I did not say there was legislation. I do not approve of it. I am simply saying there was a discussion on this in one of the other studies.

Senator Langlois: I hope this does not come from the United States, because the U.S. ministers are not responsible to Congress; it is an entirely different system.

The Chairman: We will check into it and report on it at our next meeting.

Proposal 19 goes on to describe the Penalties for violation of the legislative provisions. Subparagraph (a) prescribes a maximum fine of \$10,000 for each offence related to those sections on government contracts, incompatible offices and disclosure requirements. Subparagraph (b) requires a member of Parliament to pay to the Crown any profits he has made as a result of the government contract.

Senator Langlois: What if there are no profits? This is a tissue of contradictions.

The Chairman: Likewise, subparagraph (b) provides that a member of Parliament holding an incompatible office be required to pay the Crown the total amount of the salary received.

Senator Langlois: Would that cover a provincial indemnity, Mr. Chairman?

The Chairman: In that respect we go back to the discussion on incompatible offices, which we will discuss fully.

Senator Langlois: But this includes a provincial indemnity. To which Crown is one required to pay it, the provincial or the federal? Should it be paid in the right of Canada or in the right of a province?

The Chairman: The federal Crown is claiming it.

Senator Langlois: How can the federal government claim something that is paid by another government?

Mr. du Plessis: It is claiming it as a fine, in a sense, from the person who was in a conflict of interest situation.

Senator Langlois: That is stretching the law.

The Chairman: Subparagraph (d) relates to a senator who has been convicted of holding an incompatible office or participating in a prohibited government contract. Under those circumstances, if he does not divest himself of such contract or resign from the incompatible office within 30 days of his conviction, he will be liable to a fine not exceeding \$10,000 for each day beyond the 30-day period that he continues to commit the offence.

Senator Croll: That is really different from (c), is it not?

Senator Buckwold: What happens if the senator resigns before the 30-day period is up, will there still be a penalty?

The Chairman: That is another thing we will have to check into.

Senator Godfrey: He could be fined under subparagraph (a).

I think it might be appropriate to make a declaration of conflict of interest, if there is one. As I mentioned, I am a director of Montreal Trust and I recollected, because I was also a member of the Investment Committee of the Canada Council, that Montreal Trust held in safekeeping the endowment fund of the Canada Council. I thought it might receive \$5,000 or \$10,000 a year in that connection, so out of curiosity I called Montreal Trust last week and asked exactly what contracts Montreal Trust had with the government or government agencies so that I would be aware of exactly what the relationship was. I was considerably surprised—

Senator Greene: A death-bed repentance?

Senator Godfrey: No, but I think this is important and will be relevant in our later discussions in connection with the problem of being a director. I have the actual figures in my office, but I think I remember them sufficiently well to make my point. Montreal Trust, I learned,

is paid by the Canada Council for the safekeeping of securities approximately \$58,000 a year; it is paid by Air Canada, again for the safekeeping of securities only in connection with its pension fund, \$42,000—the total of both being \$100,000. In addition, it is paid by the CN Pension Fund for managing a portion of the fund—not just the safekeeping of securities, but actually managing a portion of the fund—another \$26,000. So that is a total of \$126,000.

Senator Croll: You just lost your job, that is all I can say!

Senator Godfrey: Prior to my inquiry, I thought it was only a matter of \$5,000 or \$10,000, and I was not even aware of the contracts between Montreal Trust and Air Canada or CN. I was aware of the Canada Council contract because I was on the Investment Committee of the Canada Council.

Senator Croll: I am sure that Air Canada borrows from Montreal Trust, and I am sure that the Canada Council borrows from Montreal Trust. All they do is take \$10,000 loans and then give Montreal Trust all that security to hold for them.

Senator Buckwold: Over and above that, I think you will find there are many other operations involving government that affect a trust company. For example, all the Central Mortgage and Housing loans. Many of these trust companies are making government guaranteed loans with moneys provided through Central Mortgage and Housing.

Senator Smith: Mr. Chairman, Senator Godfrey's declaration has moved me to recall that I have a very much less substantial concern with Montreal Trust than he as a director, that being that I am a member of a local advisory board for which I occasionally get paid for performing some functions. It never occurred to me that this was a problem.

Senator Godfrey: I am just pointing out that this is the kind of thing that has to be borne in mind.

Senator Croll: If that is the case, I have to plead guilty, too.

Senator Laird: Mr. Chairman, this is what makes the whole set-up so ridiculous. Imagine eliminating the talents of the three gentlemen who have just spoken for some ridiculous, obscure reason. That is why we have to be so careful to make sure that when we finish our report we eliminate that possibility.

Senator Godfrey: Incidentally, I should complete my declaration by saying that I hold 500 shares of Montreal Trust, which is the minimum amount to qualify as a director.

Senator Laird: Are we going to eliminate your talents from the Canada Council? That is ridiculous.

Senator Godfrey: That is what we will be discussing.

Senator Greene: Mr. Chairman, may we get away from Senator Godfrey's sins and back to the task at hand? We must remember that this comes to us from the Commons. For some reason or other, the penalty under proposal 19(c) is that a member loses his seat. Why is the same ap-

proach not taken vis-à-vis a senator? Why is the penalty \$10,000 a day? I presume that the Commons, in their lack of knowledge of the Senate generally, assume that \$10,000 would be peanuts for most senators, and that this was a lesser penalty.

The Chairman: Senator Greene, this does not come from the Commons. This comes from the Cabinet.

Senator Langlois: Only if he fails to divest himself of the interest; he has thirty days in which to do that.

Senator Greene: In the Commons, you lose your seat. Why is the penalty not the same in the Senate? If you do not divest yourself of the interests, and you are guilty, you lost your Senate seat? Why the different approach?

Senator Buckwold: Would it be a constitutional problem of getting rid of a senator? There are certain limitations in regard to a senator being removed.

Senator Croll: Misconduct is one of them.

Senator Greene: Parliament can do anything.

Senator Buckwold: It is a different kind of misconduct.

The Chairman: Mr. du Plessis points out to me that section 31 of the British North America Act specifies when the place of a senator shall become vacant.

Senator Croll: When?

The Chairman: It states:

(1) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate:

(2) If he takes an Oath or makes a Declaration or Acknowledgement of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power:

(3) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter:

(4) If he is attainted of Treason or convicted of Felony or of any infamous Crime:

(5) If he ceases to be qualified in respect of Property or of Residence;...

Senator Croll: "Felony" is the only important word in there.

The Chairman: If the provision relating to members of the House were to be extended to senators, it would require an amendment to the B.N.A. Act.

Senator Greene: Mr. Chairman, I do not quite follow that. They must have somehow got around that aspect of the B.N.A. Act when they retired senators at the age of 75.

The Chairman: That was an amendment to the B.N.A. Act.

Senator Greene: It was an amendment to the B.N.A. Act?

The Chairman: Yes, Senator Greene.

Senator Godfrey: Don't forget that amendment can be made by Parliament in Ottawa. We do not have to go to Westminster for something new that is purely federal.

The Chairman: That is right.

Senator Godfrey: So, you can change the B.N.A. Act by a simple act of Parliament, in that respect, most probably.

The Chairman: You must bear in mind that under section 22(1) of the Senate and House of Commons Act, there is a provision that:

No person, who is a member of the Senate, shall directly or indirectly, knowingly and wilfully be a party to or be concerned in any contract under which the public money of Canada is to be paid.

There is a provision for penalty in the clause that follows.

Senator Langlois: What is this penalty, would you please read it?

The Chairman:

...two hundred dollars for each and every day during which he continues to be such party or so concerned.

Senator Langlois: Peanuts!

Senator Croll: Not too many people pick them up.

The Chairman: I am not too clear what "concerned in any contract" means; but "be a party to" is clear. I do not know whether a director of a company which has a contract is necessarily concerned in the contract.

Senator Croll: He should be, if he is not.

Mr. du Plessis: Subsection 22(4) should be noted.

This section does not render any senator liable for such penalties, by reason of his being a shareholder in any incorporated company having a contract or agreement with the Government of Canada, except any company that undertakes a contract for the building of any public work.

The Chairman: Since Montreal Trust does not build any public works, you can withdraw your declaration of interest!

Senator Godfrey: No, no; I still have my declaration of interest. It might possibly affect my judgment in deliberations in this committee. We are all human.

The Chairman: Are there any other comments on proposal 19 and the penalties set out there?

Senator Croll: You know, Senator Godfrey, just while you are at it, I would not be too sure that Montreal Trust does not do any building, because I know differently.

Senator Godfrey: Oh yes, with the government?

Senator Croll: I do not know if it deals with the government; I know it does building.

The Chairman: Is that where "indirectly" comes in, Senator Croll?

Senator Croll: We are going to give him a few grey hairs before he is finished!

The Chairman: Proposal 20:

It is recommended that Members of the House of Commons who have been convicted of violating the statutory provisions relating to conflict of interest and who have served the penalties imposed on them by the courts and by Parliament ought not to be barred thereby from again seeking membership in the House of Commons.

Well, that does not affect us.

Senator Langlois: No.

The Chairman: Proposal 21:

It is recommended that the Standing Orders of the House of Commons be amended to provide the Standing Committee on Privileges and Elections with a reference at the beginning of each Parliament to oversee the conduct of Members of the House of Commons. The Standing Order should provide an outline of the scope and limitations of the Committee's responsibilities. It might read as follows:

At the beginning of each Parliament, the Standing Committee on Privileges and Elections shall be deemed to have been charged by the House with a reference to:

(a) investigate all questions of conflict of interest referred to it by the House of Commons,

(b) provide Members on request with advisory opinions,

(c) advise the House, on a regular basis, of any changes which are needed in conflict of interest legislation. The Committee may not investigate conflicts of interest of a Cabinet Minister if the alleged improprieties result from the exercise of his duties as a Minister of the Crown.

Senator Croll: That takes away, of course, what we are talking about in section 18; where action could be taken against a member, it could not be taken against a cabinet minister. It is as it should be.

The Chairman: Are there any other comments on the proposal for empowering these committees to exercise the authority that is suggested?

Senator Langlois: Do you think the Standing Committee of Privileges includes all senators? Do you think we should leave that task to the Senate as a whole?

The Chairman: The last paragraph in the notes, Senator Langlois, read this way:

In the Senate, the Committee of Privileges, which consists of all Senators, would seem to be the logical committee to be charged with this reference although consideration must be given to reducing the size of the Committee.

Senator Langlois: I see it. I am in agreement.

Mr. du Plessis: It could be a subcommittee of the Committee of Privileges.

Senator Greene: Mr. Chairman, we should follow the recommendation in the notes that there be a subcommit-

tee of the Committee of Privileges delegated to this function, if we are going to have a committee similar to Privileges and Elections in the Commons. The committee being composed of the whole Senate is patently incompetent to perform this function.

Senator Croll: You have to be a little careful here. If you have a senator who is charged and appears before the committee, I do not think you can deprive him of the right to make his presentation to the whole Senate, rather than to a subcommittee of the Senate. It is too serious a matter to leave to any one group. I believe he should be permitted, once it enters that phase, to have the whole Senate deal with it.

Senator Langlois: Senator Croll, this committee will not be entitled or given the right to investigate any conflict of interest of any senator. You have it there in black and white in proposal 21(c).

Senator Croll: Yes.

Senator Langlois: In my opinion, this proposal should be referred to the Standing Rules and Orders Committee of the Senate for the necessary action to implement it.

Senator Croll: Isn't it there now? There must be some rule, but I do not know what it is.

Senator Godfrey: I note that the House of Commons committee dealt with proposals 21 and 23 together. I think they are somewhat tied in and maybe we should consider that at the same time as we are discussing proposal 21.

The Chairman: I have just been looking at the House of Commons committee report and they suggest that the committee may also investigate questions of conflict of interest of a cabinet minister if the alleged improprieties pertain to the exercise of his duties as a member of Parliament.

I presume they would add that proposal 21 provides that the committee may not investigate conflicts of interest of a cabinet minister if the alleged improprieties result from the exercise of his duties as a minister of the Crown. The house, however, would allow the committee to investigate questions of conflict of interest of a cabinet minister if the alleged improprieties pertained to the exercise of his duties as a member of Parliament.

Senator Croll: That seems reasonable.

The Chairman: I think so, also.

By the way, going back to proposal 18 for the moment, that which we discussed at length, which provides that an application may be made to a superior court, in clause 16 the house committee recommended that that be changed to the Federal Court of Canada.

Senator Croll: I have no objection to that.

Senator Langlois: Neither have I objection.

The Chairman: I will move on to proposal 22, which the house committee recommended be eliminated. It reads as follows:

It is recommended that each Committee be provided with assistance and relieved, where possible,

of the day-to-day administrative duties. It might be helpful if the Committees themselves were composed of senior members of the House and Senate.

The only comment of the house committee on this is that proposal 22 be eliminated.

Senator Robichaud: What is that for: "It might be helpful if the Committees themselves were composed of senior members of the House and Senate"? Who are "senior" members and "junior" members?

Senator Laird: For instance, I was the senior senator from Windsor for a period.

Senator Godfrey: We have the third category, of "new boy"!

Senator Robichaud: Who is to make the distinction between a senior, a junior, or a medium?

Senator Croll: There is a rule of seniority in the Senate.

Senator Robichaud: Yes, there is a rule of seniority because of the time of appointment, but who is to say that a junior cannot be just as competent as a senior to sit on such a committee?

Senator Croll: This is not competence; it is seniority.

The Chairman: The note that follows shows that this is taken from the American practice and, of course, in the United States seniority means seniority. That is why men of 80 and 85 years of age are chairmen of committees.

Senator Robichaud: Exactly; which is entirely wrong. I would certainly delete that. I do not believe it serves any purpose to have a provision such as that included.

Senator Godfrey: The comment of Mr. Joseph Clark in the house committee with respect to this point is interesting to read:

Mr. Clark took exception to Proposal 22 which suggested that it would be helpful if the Committee responsible for the conflict of interest of Members of Parliament be composed of senior Members of the House and Senate. While agreeing that senior Members should certainly be on such a Committee there was a danger of "clubbiness" developing the longer one stays on a Committee. Further, he underlined the possibilities that older Members may not be sensitive to new kinds of conflict of interest that might develop for Members of Parliament.

Senator Robichaud: I agree.

Senator Langlois: I would suggest, Mr. Chairman, that we follow the example of the House of Commons in putting aside this proposal altogether.

The Chairman: Is it agreed to eliminate proposal 22?

Hon. Senators: Agreed.

The Chairman: Proposal 23 reads as follows:

It is recommended that:

(a) The Speakers of the House of Commons and Senate should continue the current practice of refusing to refer to Committee those questions

properly handled by the courts. In those cases brought before the Committee where a violation of the statutory laws, the Committee should normally refrain from making any decisions which might reflect upon the guilt or innocence of the accused under the law until the matter has been finally determined by a court of law.

(b) In those cases of conflict of interest which involve questions of violation of the rules and traditions of the House or Senate, the House or Senate alone should continue to be responsible for the final decision and for applying sanctions. The Committee should be charged with making the preliminary determination and with advising the House or Senate of the sanctions which are appropriate.

Senator Langlois: I assume that the committee to which reference is made in proposal 23 is the Committee on Privileges and Elections and the Committee of Privileges in the Senate.

The Chairman: Yes, I think so; in my opinion this sounds reasonable.

Senator Godfrey: It might be interesting to note that the committee of the Commons said:

Mr. Brewin indicated that he was quite unhappy with Proposals 21 and 23 because on the one hand they create a committee giving it certain responsibilities and then in effect exclude its jurisdiction when the matter is taken to court. Mr. Brewin said that he would prefer the British practice where such matters are more and more being dealt with by the respective Houses of Parliament. He was particularly concerned that the powers of the courts as stipulated by these Proposals were so broadly drawn that any conflict of interest would come under their jurisdiction. The Proposals did not create a proper balance between the Committee and the courts. He felt that the courts should be the last resort and the Committee the first.

There is a conflict between paragraph (a) and paragraph (b) of proposal 23 as to which to leave to the courts and which to the Committee; it is not quite that simple.

Senator Greene: Perhaps our legal counsel could help with respect to a problem I am experiencing: Does proposal 23 indicate that if one of Senator Smith's trouble-making citizens has started an application before a court to stigmatize the member, the Senate or house committee is barred from acting? If anything started under 19, would 23 bar the member or the senator from being tried by his peers, if you like, in the committee?

Mr. du Plessis: At first glance, it would seem that we have two separate procedures. It would be interesting to see if there is any inter-relationship between those two procedures.

Senator Greene: On Senator Smith's point, if someone wishes to harass a senator, by the provisions of proposal 23 we would even deprive that senator or member of the right to appeal to the committee of his respective house. So, under proposal 19, that weapon that we put in the hands of any trouble-maker—

The Chairman: We have not put any weapon in the hands of anyone yet, Senator Greene.

Senator Greene: Not yet, but if we adopt these procedures, we apparently under proposal 23 would not only give the harasser the right to harass, but deprive the senator or member of the right to appeal to his own house in the matter.

Senator Croll: There was an interesting situation in the House of Commons at Westminster in connection with the member of Parliament who ran away, Mr. Stonehouse. He returned, was granted bail and finally walked into the House of Commons. He has any number of lawsuits awaiting him on the outside.

The Chairman: Not only lawsuits, but criminal proceedings.

Senator Croll: I do not know if he makes any speeches, but the house is not touching him until he is finished with the courts. They could have ridden him out very quickly and decently, but they did not and are awaiting the completion of the proceedings in the courts.

Senator Greene: Yes, but I doubt that they have anything in the nature of what is covered under proposal 19. These are normal criminal proceedings and the privilege of a senator or member should not extend to protect them from such proceedings.

Senator Smith: Civil cases might not infringe upon his duties as a member of Parliament in any way.

Mr. du Plessis: Did you ask a question as to the sanction under proposal 19, senator? The sanction is \$10,000 for each offence. However, proposal 19 deals with offences that can be dealt with by a court, whereas proposal 23 deals with violations of the rules and traditions of the house or Senate. This may be the distinction we are looking for.

Senator Robichaud: It seems to mean that.

Mr. du Plessis: In one case we are dealing with offences under the act, and in proposal 23 we are dealing with possible violations of the rules and procedures in the Senate.

Senator Langlois: It says "current practice". To which current practice are we referring? It says, "should continue the current practice".

The Chairman: The practice or refusing to refer to committee those questions properly handled by the courts.

Senator Langlois: That is what I would like to know—what practice? That would throw some light on the meaning of this proposal.

Mr. du Plessis: It perhaps means that it is an implied procedure or practice.

Senator Godfrey: Proposal 21 would appear to be in direct conflict with proposal 23(a). Surely conflict of interest actions are offences under the statute. Under proposal 21(a) we are to refer it to the House of Commons, and under proposal 23 the Speaker will refer it to the House of Commons after the matter has been determined by the court.

Mr. du Plessis: This requires a more detailed study, which I have not done at this point.

Senator Laird: I have been trying to determine whether there is anything in the draft act that affects the situation. From a glance, I cannot see that there is anything.

The Chairman: There is nothing in the draft act on proposal 23.

Senator Laird: Then what force has any proposal? It has to be in the form of legislation before it means anything.

The Chairman: Perhaps Mr. du Plessis could try to reconcile proposal 23 with proposal 21(a), as Senator Godfrey has suggested. If there is any reconciliation required with proposal 19, that might also be done.

Senator Langlois: I would like Mr. du Plessis to be requested to look into this question of "current practice".

The Chairman: Proposal 24 says:

It is recommended that a provision be inserted in the "Independence of Parliament Act" to enable the designated standing committee to grant special dispensation to any Member or Senator, where it can be shown that, for reasons of public interest or undue hardship, a Member or Senator should be permitted to participate in a government contract.

The suggestion in the note is that this is intended to cover a case where "it proves impossible for the Member to dispose of the contract or ... his interest". Should it stand? That proposal stands.

Proposal 25 say:

It is recommended that a provision be included in the "Independence of Parliament Act" requiring that any legal action under the "Act" be commenced within two years of the commission of the offence or within six months from the day on which the offence became known to the Attorney General.

Senator Smith: Or whichever is the shorter. The Attorney General may discover it 12 years later, and then wait another six months before starting a prosecution. It seems to me that a two-year period or something less would be sufficient.

Senator Godfrey: It really could be longer. I was going to suggest that it should be whichever is longer. In a case of fraud, you could prosecute someone four, five or six years after the commission of the offence.

Senator Smith: I would not argue about the two years specifically. I am saying that the provision of six months from the day on which the offence becomes known to the Attorney General makes that a limitation of time.

Senator Godfrey: If it goes on for four years and then comes before the Attorney General, he has to move within six months.

Senator Smith: It might go on for 10 years.

Senator Laird: Or forever.

Senator Greene: I hope, Senator Godfrey, you are not pointing to the Income Tax Act as the model to be followed.

Senator Godfrey: I was referring to the shorter period of six months; but I see your point.

Senator Smith: I would not argue specifically over the two years, but the way it is worded here, and in the draft bill, it is really no time at all, in effect.

Senator Laird: I think Senator Smith raised a valid point.

The Chairman: Have you in mind a maximum time limitation?

Senator Smith: I would have thought something like four or five years. Six years in the case of civil instances is an accepted period. That seems to be rather long. In some jurisdictions doctors have immunity after two years from being sued for malpractice. I think lawyers are subject to the usual limitation period of six years.

Senator Langlois: I suggest that we take a look at clause 12(5) of the draft act, which goes even further than the proposal indicates. Clause 12(5)(b) says:

at any time within six months from the day on which evidence, sufficient in the opinion of the Attorney General of Canada to justify prosecution for the offence, came to his knowledge.

That could be stretched to eternity.

Senator Godfrey: May I suggest that the staff look into the limitations as they appear in the Criminal Code, and come up with something which might be relevant?

Senator Smith: These are hardly in the nature of criminal offences.

Senator Godfrey: In a civil case it is usually six years.

Senator Smith: In a motor vehicle case it is just one year.

The Chairman: Mr. du Plessis will look into that. This completes our first reading of the proposals. We have agreed that honourable senators will read the information given in answer to questions raised, and we will try to distribute whatever additional information we have in answer to questions which have since been raised. The committee stands adjourned until after the Christmas recess.

Senator Langlois: Shall we receive the reading before we adjourn for the Christmas recess?

The Chairman: You have some of the material already. I will ask Mr. Finsten to do his best to see that we receive more before we adjourn.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

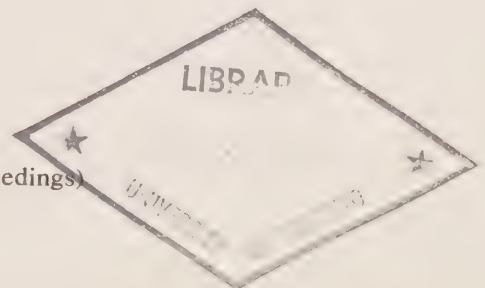
Issue No. 30

TUESDAY, FEBRUARY 24, 1976

First Proceedings on Bill C-71 intituled:

“An Act to amend the Criminal Code and to make related
amendments to the Crown Liability Act,
the Immigration Act and the Parole Act”

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*

The Honourable Keith Laird, *Deputy Chairman*

AND

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(19)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, 18th February, 1976:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Perrault, P.C., for the second reading of the Bill C-71, intituled: "An act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, February 24, 1976
(48)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m., the Honourable Senator Goldenberg presiding.

Present: The Honourable Senator Goldenberg (*Chairman*), Croll, Godfrey, Laird, Lang, Langlois, Neiman and Smith (*Colchester*). (8)

Present but not of the Committee: The Honourable Senator Haig.

In attendance: Mr. R. L. du Plessis, Acting Law Clerk and Parliamentary Counsel.

The Committee commenced its examination of Bill C-71 intituled "An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act".

The following witnesses, from the *Department of Justice*, were heard in explanation of the Bill:

Mr. D. H. Christie, Q.C.,
Associate Deputy Minister;

Mr. S. F. Sommerfeld, Q.C.,
Director, Criminal Law Section.

On recommendation by the Chairman, it was *agreed* that the Committee would examine the Bill by clauses or groups of clauses arranged by officials of the Department of Justice by *subject matter*, rather than by usual numerical order of the clauses.

Mr. Christie and Mr. Sommerfeld provided explanations for each clause examined by the Committee. The witnesses then answered questions.

The Chairman called Clauses 2(1), 3, 33, 34, 2(2), 4, 5, 6 and 7. After debate the said Clauses carried.

Clauses 45 and 46 were allowed to stand.

Clauses 47(2), 47(6), 48, 49, 54, 55(1), 55(2) and 8 carried.

Clause 44 was allowed to stand.

Clauses 66, 10, 11, 62(c)(iii), 12 and 13 carried.

Clause 9 carried, subject however to the requirement that the French text of the said laws be examined by officials of the Department of Justice and that the witnesses report to the Committee on their findings.

At 4:55 p.m. the Committee adjourned to Wednesday, February 25, 1976 when the Senate rises in the afternoon.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, February 24, 1976.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-71, to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act, met this day at 2.30 p.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have as witnesses from the Department of Justice: Mr. D. H. Christie, Q.C., Associate Deputy Minister; and Mr. S. F. Sommerfeld, Q.C., Director, Criminal Law Section.

As honourable senators know, this is a rather long and somewhat complicated bill. From my reading of it, some of it, I think, consists merely of housekeeping changes. There are, however, a number of substantive changes to the Code itself.

You have before you a list of the various subject matter headings of this bill. I have discussed our method of proceeding with Senator Laird, our deputy chairman. The committee in the other place did not study the measure clause by clause but by headings. We have the headings before us, if the committee agrees that that is a convenient way of proceeding, rather than by way of examination of the bill clause by clause, which would only be confusing and would take an unduly long time.

Do you want a preliminary statement by the officials of the Department of Justice?

Senator Haig: No.

Senator Laird: No.

Senator Haig: Just a preliminary statement on each subject matter would suffice.

Senator Godfrey: Would the witnesses give us a preliminary statement on each heading, or not at all?

The Chairman: I am leaving it to the committee.

Senator Haig: I am not a member of the committee, but I think that if they take the headings in the order of this sheet, and tell us something about each one as we come to it, that will be satisfactory.

The Chairman: Is that agreeable to you, Mr. Christie and Mr. Sommerfeld?

Mr. D. H. Christie, Q.C., Associate Deputy Minister, Department of Justice: Yes.

The Chairman: Unless you have reason to make a preliminary statement yourselves.

Mr. Christie: If it is agreeable to the committee, we will make short statement in relation to each group of clauses,

and of course we will be prepared to answer any questions that members of the committee may have.

The Chairman: Well then, the first heading is "Internationally Protected Persons, clauses 2(1), 3, 33, and 34."

Mr. Christie: The purpose of this first series of clauses is to implement a convention that was entered into on February 5, 1974, to afford additional protection for internationally protected persons. The expression "internationally protected persons", basically, refers to the diplomatic community. As is well known, there has been a series of incidents, both in Canada and abroad, which have put diplomats, ambassadors, their families and entourages in special jeopardy. The purpose of this convention is to ensure that people who commit these outrages will be extradited. If they manage to escape they are either extradited to Canada or the appropriate country. If there is no extradition agreement, then it is understood that the country that does refuse to extradite will itself apply some appropriate penal sanction in accordance with its own laws.

Senator Laird: And that is what the convention or treaty said?

Mr. Christie: That is the essence of the convention.

Senator Lang: What does that change, Mr. Christie?

Mr. Christie: Well, it changes jurisdictional factors. For example, it is conceivable under this convention that a person might do damage to a Canadian diplomat abroad, and if he came within our jurisdiction we would try him, whether or not we extradited him. Alternatively, a person might be in this country—although this is most unlikely—who had committed an outrage abroad and who for some reason was not to be extradited. We could try him in this country for an offence committed abroad. That would be a rare instance, but that is provided for in the treaty.

Senator Smith (Colchester): I wonder what is the breadth of that reference to countries in respect of which we have no extradition agreements. Are there very many of those? If so, who are they?

Mr. Christie: There are countries with which we do not have extradition treaties. Brazil is one. Offhand, I could not give you an exhaustive list, but there are countries with which we do not have extradition treaties. There are also countries which belong to this convention, and this would apply even though we might not have a bilateral extradition treaty with another country such as Brazil.

Senator Smith (Colchester): But that would leave that country in the position of applying its own laws, whatever they might be, and their laws might call for the bestowing of a commendation of merit for whatever the person in question had done.

Mr. Christie: I do not know if they would ever go so far as to give a commendation of merit for such an act; but it comes down to this, that you would leave the operation of the law to whatever their legal system might call for, and their laws might be much more lenient than ours, under the circumstances.

Senator Langlois: Mr. Chairman, could we be supplied with a list of the signatories to this convention?

Mr. Christie: Yes, we will supply you with a list.

The Chairman: Is there any other discussion on the clauses? Shall clauses 2(1), 3, 33 and 34 carry?

Hon. Senators: Carried.

The Chairman: The next matter is, "Designation of Provincial Judges".

Mr. Christie: In recent years the practice of using the designation "magistrate" has been disappearing in the provinces. It started out with Ontario and Quebec, followed by New Brunswick, British Columbia, Alberta and Saskatchewan. This bill will now pick up Alberta, Manitoba, Prince Edward Island and Nova Scotia, so that in those provinces the designation "magistrate" will disappear and the phrase "provincial court judge" or "provincial judge" will be used in substitution. I believe the idea behind it is a hope on the part of the provinces that the new terminology will perhaps elevate the status of these judicial officials.

Senator Smith (Colchester): Will it provide the basis for a claim for higher remuneration?

The Chairman: Shall clause 2(2) carry?

Hon. Senators: Carried.

The Chairman: The next subject matter is "Procutorial Authority of the Attorney General of Canada," clauses 4 and 5.

Mr. Christie: Section 115 of the Criminal Code provides that "every one who, without lawful excuse, contravenes an Act of the Parliament of Canada... is... guilty of an indictable offence and is liable to imprisonment for two years", where no other penalty or punishment is provided.

Section 116 provides:

Every one who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money is, unless some other penalty or punishment or other mode of proceeding is expressly provided by law guilty of an indictable offence and is liable to imprisonment for two years.

In other words, these are general provisions covering the situation where Parliament might create an enactment, or by statute or regulation, but provide no penal sanction. These two clauses are what might be called catch-all clauses. We feel that the federal government should expressly be permitted to prosecute under these clauses, because we do pass legislation from time to time in which we do not specifically provide for sanctions, or we obtain court orders where there is no express provision for sanctions. As you know, normally we do not prosecute under the Criminal Code; that is the general rule. This would be an exception to the rule; in other words, this would expressly give the Attorney General of Canada power to

prosecute under sections 115 or 116 of the Criminal Code as an exception to the general rule against his prosecuting under the Code.

Senator Laird: It is just filling a vacuum; that is all.

Mr. Christie: Basically that is what it is.

The Chairman: Are there any questions? Shall clauses 4 and 5 carry?

Hon. Senators: Carried.

The Chairman: The next item is "Making False Statements Under Oath," clause 6.

Mr. Christie: It has been held by the Supreme Court of Canada, in 1971, in a case called *Boisjoly*, that it is not an offence to make a false statement under oath unless there is some specific reason for it or some specific authority for it; for example, an affidavit under lien proceedings or an affidavit in support of probate of an estate, or some other affidavit or statutory declaration where you can find a specific law that authorizes the making of the affidavit.

What happened in *Boisjoly* was that a person made an affidavit before some police officers which turned out to be false. It was held that there was no specific judicial authority for the taking of the affidavit, so the making of a false affidavit under oath was not an offence. This amendment will make it an offence if a person deliberately makes a false affidavit or a false statutory declaration, unless it is a statutory declaration or an affidavit taken by police in the course of a police investigation.

It is considered that in those circumstances police should not be taking affidavits and statutory declarations. There is a sufficient body of law about the taking of statements by police, and the circumstances under which they may take them, without their having the extra aid of being able to take statements by statutory declaration or under oath.

The Chairman: Are there any questions? Shall clause 6 carry?

Hon. Senators: Carried.

The Chairman: The next item is, "Bail—Pre-Trial Release." The clauses are 7, 45, 46, 47(2), 47(6), 48, 49, 54, 55(1) and 55(2).

Mr. S. F. Sommerfeld, Q.C., Director, Criminal Law Section, Department of Justice: This is a group of amendments to render provisions of the Criminal Code more effective relating to pre-trial release of accused persons. Clause 7 relates to the offence of not attending for fingerprinting. When the Bail Reform Bill was originally drafted there was a provision to allow an accused charged with an indictable offence who was not detained in custody to attend at a police station at a time specified in the summons, on the basis of which he was released. These provisions were enacted to avoid taking the accused into custody simply to obtain his fingerprints. Failure to attend for fingerprinting in accordance with the notice under which he has been held renders him liable to arrest, but it does not constitute an offence. The purpose of clause 7 is to provide that it shall be an offence.

Senator Smith (Colchester): If that is all Mr. Sommerfeld has to say about clause 7, would it be in order to ask a question at this point?

The Chairman: Of course.

Senator Smith (Colchester): I have observed that on occasions when the police, including the RCMP, are investigating a case they will persuade, by command, individuals to go and have their fingerprints taken without any charge being laid or without any summons being issued. Is that considered to be a recognized, authorized practice?

Mr. Sommerfeld: I am not sure what the practice of the police is in this respect, but the provision for a police officer taking fingerprints is, of course, governed by the Identification of Criminals Act.

Senator Smith (Colchester): Yes, I know.

Mr. Sommerfeld: The only purpose of this clause is to ensure that where a person is required to attend for fingerprinting and does not do so, he shall be guilty of an offence.

Senator Smith (Colchester): I understand that reasonably well, I think, but what I was asking—perhaps you cannot answer this—is whether the Identification of Criminals Act does in fact allow the practice I mentioned, of insisting that a detained person, who may or may not eventually be charged with any offence whatever, attend for the purpose of the taking of fingerprints.

Mr. Christie: No. The Identification of Criminals Act allows the taking of fingerprints of a person who is charged with an indictable offence and is in custody.

The Chairman: Any further questions? Shall clause 7 carry?

Hon. Senators: Carried.

Mr. Sommerfeld: Clause 45, Mr. Chairman, provides an amendment to section 453.3 respecting the appearance notice. This subsection requires an accused who has given a promise to appear, or has entered into a recognizance, before an officer in charge of a police station, to sign the promise to appear or the recognizance. There have been cases where an accused has arranged for another person to attend for fingerprinting in his place, and the object of having him sign, of course, is to enable an identification to be made of the person who subsequently does show up for the purpose of fingerprinting. This is necessary because ordinarily the officer will not be in a position to identify the person who shows up and says, "I am so-and-so who was asked to appear for fingerprinting." That is the purpose of having him sign the recognizance or the promise to appear.

Senator Lang: Does he then sign some other document when he does appear, and are the signatures compared? Is that the idea behind it?

Mr. Sommerfeld: He signs a duplicate at the time. In fact, he signs two of them and one copy is kept and he has to show up with the other one.

Senator Lang: He has to show up with the second one, but it could be his friend showing up with the second one. I presumed he would have to sign in the presence of the police officer so that the police officer could compare the signatures. I know it is a small point.

Senator Neiman: There probably would be some other means of identification anyway, apart from that.

Senator Laird: Mr. Chairman, I was going to suggest that if it is difficult for the witness to answer this point at this time—and I know it is difficult because of the size of

the bill—then perhaps he could make a note of it and could give us the answer when we meet again for further consideration of the bill.

Mr. Sommerfeld: I will try to determine the answer to that, Mr. Chairman.

The Chairman: Then we will hold clause 45 for the moment. Now, clause 46.

Mr. Sommerfeld: This relates to section 454(1)(d) of the Code, and by the present section 453 an officer in charge of a station is obliged to release a person charged with an offence that would carry a penalty of less than five years' imprisonment unless the public interest otherwise requires. In some cases this release is either on a promise to appear or a recognizance. If a person is charged with an offence punishable by imprisonment for a period of more than five years, the officer may release him, perhaps with the intention of subsequently obtaining a summons to compel his appearance. The whole object of these provisions in the Criminal Code respecting release is to ensure that the person is not detained in custody pending trial unless it is really necessary. This amendment authorizes the officer in charge to release a person who is charged with an offence punishable by a term of more than five years on a promise to appear or a recognizance, thus avoiding the necessity of obtaining a summons following the release of that accused. I do not think I have anything further to add to that.

Senator Godfrey: I still do not understand it.

Senator Laird: Neither do I. There has been power under the existing legislation to release, and I can tell you quite frankly that at the time that the Bail Reform Bill came over here this is one of the big objections I had to it—putting such an onus on the police officer. Now, without having gone into this particular bill, I was hoping that that aspect would be amended. Perhaps it will be in some of the later sections, but is it or is it not?

Mr. Christie: Yes, senator. You are concerned about the onus provision being on the Crown throughout? We will be dealing with this aspect later on.

Senator Laird: Yes, but when I said "onus" I know that as lawyers you will take me in the technical sense, but what I really meant was that one of the objections I had to that Bail Reform Bill was the burden it put on the police officer to form a judgment. I mean, this is casting quite a burden on an untrained man.

Mr. Christie: Oh, you are speaking of the burden on the police officer.

Senator Laird: Yes.

Mr. Christie: Later on we will be dealing with that.

Senator Laird: I know what you do about the onus, and I am all for that in the technical and legal sense. I want to find out if there is still that burden on the individual police officer who picks somebody up. Must he then make a decision as to whether or not this person will be taken into custody?

Mr. Christie: I think the answer to that must be yes. After all he picks the person up, and I do not see how he can escape making the decision on the question as to whether or not the person should be taken to the station and put in the hands of the man in charge of the station, or

whether he should be released with a notice to appear right on the spot. There is judgment to be exercised by police officers, but I might say that I have met with the executive of the Canadian Association of Chiefs of Police as recently as last week, and there was not a word of complaint raised at that meeting about the duties which police officers are expected to discharge under the bail provisions of the legislation as it now exists. There were complaints about other things, but we will come to those later in the study of the bill.

Senator Laird: Well, that clarifies it as far as I am concerned.

Senator Godfrey: I still do not understand what the difference is. What does this amendment accomplish, again?

Mr. Sommerfeld: In the case of a person charged with an offence punishable with less than five years, the officer is obliged to release him "unless so and so . . ."

Senator Lang: That is the law as it now stands.

Mr. Sommerfeld: Under the amendment now where it is punishable with more than five years, except for these serious offences and so on, he does have the authority to release him on his own recognizance or his promise to appear. He may do so.

Senator Godfrey: You are extending that?

Mr. Sommerfeld: As I understand it, what used to happen before was that for one reason or another he might have been reluctant to take him into custody but he might still have wanted to keep a handle on him, so he would let him go and would then have to summons him to get him back in. This way he can turn him loose on his own recognizance or on his promise to appear, even if it is an offence which would involve more than five years' imprisonment.

Senator Godfrey: And there is no summons required. I follow that.

Senator Smith (Colchester): Mr. Chairman, unless one knows what subsection (3) says, it is difficult to tell what difference this makes, because the chief change is the insertion of the words "under subsection (3) or otherwise conditionally . . ." Unless you know what subsection (3) is, it is pretty hard to tell what change this does in fact effect.

The Chairman: Mr. du Plessis will show the section to you, Senator Smith.

Senator Smith (Colchester): Thank you very much. It appears to deal only with persons who are in custody because it is desired to prevent them from committing an indictable offence.

Senator Laird: It is a pretty subjective test, is it not, if the officer has to decide on the spot whether or not under subsection (3) of section 454 this individual might commit an offence. The officer has to make that test in his own mind.

Senator Neiman: The wording of that section, Mr. Chairman, seems to imply that the peace officer has to decide whether the fellow he was arresting was about to commit an indictable offence. It is not whether he would in the future commit an indictable offence. I really do not follow the wording of it very well.

Mr. Sommerfeld: Mr. Chairman, section 454 deals with the situation where a person has been arrested with or without a warrant, and where that happens he should be taken before a justice to be dealt with as set out in (a) and (b), where it says: "unless, at any time before the expiration of the time prescribed . . . (c) the peace officer . . . releases the person under any other provision of this Part, or, (d) the peace officer or officer in charge is satisfied that the person should be released from custody unconditionally, whether under subsection (3) or otherwise, and so releases him."

The amendment provides for the situation where the peace officer or officer in charge is satisfied that the person should be released from custody, whether unconditionally under subsection (3) or otherwise conditionally or unconditionally, and so releases him. The effect of "otherwise conditionally or unconditionally" then enables him to release him on recognizance or promise to appear, although it may be for an offence which carries more than five years.

Senator Neiman: Where do you get the five years? I do not understand where that is in the section.

Mr. Sommerfeld: That is in section 453.

Senator Laird: It is section 453.1(d).

Mr. Sommerfeld: Thank you, senator.

Senator Neiman: I do not know how that relates to section 454. How is that tied into section 454?

Mr. Sommerfeld: Section 453.1 applies to a person who has been arrested and is detained in custody under section 454(1) for, among other things, an offence punishable by imprisonment for five years or less.

Senator Neiman: It does not tie it into that section particularly. It would seem to me that the plain meaning of this section is simply to enlarge the powers of the peace officer to decide whether he will grant or recommend that bail be given under certain circumstances, but I still do not see the sense in relating that to this particular section. In fact, I do not really get the sense of that section; and I still do not see its relation back to an offence which carries a punishment of five years' imprisonment.

Senator Smith (Colchester): It deals with exactly the same type of offences, but would the person concerned have the right to impose conditions on the release?

The Chairman: We will defer consideration of clause 46 until later, if that is agreeable to the committee.

Senator Godfrey: You are only adding the one word "conditionally", are you not?

Senator Neiman: "or otherwise conditionally".

Senator Godfrey: "or otherwise" is in the present act.

Mr. R. L. du Plessis, Acting law clerk and Parliamentary counsel: It is the words "conditionally or unconditionally" that are added, and the word "otherwise" refers to a situation other than the situation that is dealt with in subsection (3).

Senator Godfrey: I am sorry. The first "unconditionally" is in the present subclause (d), but just in another place. It says "from custody unconditionally", instead of "from custody whether unconditionally". It is just a transposition.

Mr. du Plessis: The same word is still there in the new section. It is "whether unconditionally under subsection (3) or otherwise", and then that is followed by the words "conditionally or unconditionally."

Senator Godfrey: You do not need the extra "unconditionally" in the previous one. I do not know what the second "unconditionally" adds.

Mr. du Plessis: You mean, in the existing text?

Senator Godfrey: Yes.

Senator Neiman: It refers to otherwise than under clause 3. The old section refers only to clause 3, and the amendment means as well—"otherwise," perhaps—as under other clauses. It can be conditionally or unconditionally.

Mr. du Plessis: That is right, "under other circumstances."

The Chairman: Well, we will defer clause 46 and go to clause 47 (2).

Mr. Sommerfeld: Clause 47(2) deals with a cash deposit in lieu of surety, in a case where the prosecutor has not shown cause why the accused should be retained in custody, where he would have to be released on entering into a recognizance, and the justice has ordered that he give sureties. At the present time the only situation where a cash deposit may be given is under 457(2)(d), where the accused is not ordinarily resident in the province, or has not lived within a hundred miles of the place where he has been arrested. In that case they may make a cash deposit.

There are cases where a person might otherwise be required to produce a surety; however, for perfectly valid reasons, he may not be able to do so. He may, for example, have only recently moved to the area, in which he knows no one sufficiently well to provide the necessary sureties. The purpose of this amendment is to enable him to be released on the posting of cash bail in lieu of sureties, with the consent of the prosecutor. That is the purpose of this subclause.

Senator Godfrey: What is the advantage in having sureties over the equivalent amount of cash bail?

Senator Laird: That means there are two more people to pick up if he goes tooting off.

Mr. Sommerfeld: I think the original purpose, largely, of getting rid of cash bail was to ensure that a person would not be held in custody simply because he could not put up sufficient money.

Senator Godfrey: I see that; but I gathered from your explanation that we were giving him some sort of concession by permitting him to put up the cash bail because he could not obtain sureties on account of being new in the neighbourhood. Why could you not always give him the right to put up cash bail, rather than requiring him to have sureties?

Mr. Christie: Going back to the Bail Reform Act of 1972, there was a principle underlying that act the purpose of which was to do away with cash bail altogether, on the theory that a person should not remain incarcerated simply because he cannot find money with which to put up bail, while another person of more affluent means can find the money and therefore finds himself on the street. It is

obvious from this amendment that experience has shown that that theory is not one hundred per cent valid, and I think this is really what underlies the amendment.

The Chairman: Are there any other questions on clause 47(2)? Shall the clause carry?

Hon. Senators: Carried.

The Chairman: Clause 47(6).

Mr. Sommerfeld: This clause, Mr. Chairman, has to do with the situation where an accused is charged with certain serious offences, such as murder. Under section 457.7(1) as it now is, only a judge of a superior court of criminal jurisdiction can order his release. In these cases, of course, the accused appears in the first instance before a justice, who remands him in custody, but the Code does not expressly provide that the justice will issue an order in writing so that the keeper of the jail will have clear evidence of authority to detain him. The amendment in this subsection is designed to clarify that point by saying:

Where an accused who is charged with an offence mentioned in section 457.7 is taken before a justice, the justice shall order that the accused be detained in custody until he is dealt with according to law and shall issue a warrant in Form 8 for the committal of the accused.

Senator Laird: That means taking him before a judge of a criminal court.

Mr. Sommerfeld: Yes.

Senator Croll: What is bringing about the great amount of criticism we are getting as a result of our bail laws?

The Chairman: Senator, we will deal with that later. If you look at the top of page 3 of the subject matters there is a heading "Bail Reform Act". The committee decided to proceed along these lines; Mr. Christie will deal with your question under the heading "Bail Reform Act". Am I right?

Mr. Christie: That is correct.

The Chairman: Is that all right, Senator Croll?

Senator Croll: Yes. I was not here at the beginning of the meeting.

The Chairman: We are now talking of, "Bail Pre-Trial Release."

Senator Godfrey: I must confess that I did not realize the distinction between the Bail Reform Act and what we are talking about now. Would you just explain that so that I understand?

Mr. Christie: We are now dealing with bail in two groups of clauses. One group is called "pre-Trial Release," which is a group Mr. Sommerfeld has been dealing with. The second group is under the heading, "Bail Reform Act," which is a heading that I think is of main interest. I think that is the heading Senator Croll has in mind.

Senator Godfrey: Isn't most of bail pre-trial release?

Mr. Christie: It is all bail, except that what we call the Bail Reform Act provisions are those that have been the subject of public debate generally, both in Parliament and out of it. That was the reason the division has been made on that basis. Quite frankly, we regard these as more

housekeeping changes than ones of real substance. We consider that what we call the "Bail Reform Act provisions" are the ones of real substance.

Senator Godfrey: That is a separate act which is not in the Criminal Code.

Mr. Christie: It is in the Criminal Code, but that is the way we have broken it down, rightly or wrongly. I think the real debate will come later.

Senator Lang: Is the Parole Act the same as the Bail Reform Act?

Mr. Christie: No.

Senator Lang: This bill does not say anything in the preface about amending the Bail Reform Act.

The Chairman: The Bail Reform Act is part of the Criminal Code.

Senator Lang: It is a heading.

Senator Laird: When it came over to us it was called the Bail Reform Bill.

Mr. Christie: But it is really part of the Criminal Code.

Senator Laird: This is only a popular way of describing these provisions in the Criminal Code; that is all it is.

Mr. du Plessis: It was the short title of an act to amend the Criminal Code.

Senator Laird: I remember it very distinctly since I refused to take it here, thinking it was no good.

The Chairman: Shall clause 47(6) carry?

Hon. Senators: Carried.

The Chairman: Clause 48.

Mr. Sommerfeld: Clause 48 deals with publication of the evidence that comes out at a bail hearing. It was originally recognized that publication of that kind of evidence could be prejudicial to an accused, and for that reason under section 457.2 of the Criminal Code the court was given discretion to prohibit publication until completion of the trial. However, the change proposed in this clause is to require the court, on the application of the accused, to prohibit the publication of evidence that comes out at his bail hearing, along the same lines as he may do in the case of a preliminary inquiry.

Senator Croll: Under what circumstances is that usually exercised?

Mr. Sommerfeld: In the case of a preliminary inquiry?

Senator Croll: Yes.

Senator Godfrey: Always when an accused asks.

Senator Croll: No.

Senator Godfrey: That is the point of the clause.

Senator Croll: Was it always?

Senator Godfrey: This is an amendment to require it to be done.

Senator Croll: It was not always the rule.

Senator Godfrey: No. That is what the amendment is for.

Mr. Sommerfeld: Under section 467, which is the one dealing with preliminary inquiries, the justice is obliged to make the order if the application is made by the accused.

The Chairman: Shall clause 48 carry?

Hon. Senators: Carried.

The Chairman: Clause 49.

Mr. Sommerfeld: Section 457.3 of the Criminal Code, as it now stands, sets out the procedure to be followed on a bail hearing. It indicates the nature of the evidence that may be adduced, and so on, on which the judge may rely in coming to his conclusion. Doubt has been expressed by some judges that the section as it now stands would permit the prosecutor at a hearing to lead evidence as to the circumstances of the offence with which the accused is charged and the probability of his being convicted. This amendment is designed to make it clear that the prosecutor may lead such evidence. Clause 49 provides that the prosecutor may, in addition to any other relevant evidence, lead evidence along the lines of the four subsections now in clause 49.

Senator Godfrey: There was some doubt before about whether it was possible.

Mr. Sommerfeld: Yes. There was a difference of opinion, I understand, between judges in the provinces of Quebec and Ontario about whether this could be done.

The Chairman: Shall clause 49 carry?

Hon. Senators: Carried.

The Chairman: Clause 54.

Mr. Sommerfeld: When a person has been released following a bail hearing, under section 457.8 as it now stands, the conditions of that release can only be altered by a county or district court judge or a judge of the Superior Court of criminal jurisdiction, pursuant to a review of that interim release as is provided for in the Code. The general experience has been to the effect that it is desirable sometimes to permit the alteration of the terms of release in the light of changed circumstances, and it is an additional expense and it is additional trouble, and so on, to go through a bail review or a bail appeal, if you like, in order to do that. The amendment proposed in this clause would permit this to be done at any time, when there is cause shown, by the court, the judge or the justice before whom an accused is being or is to be tried, by a justice presiding at a preliminary inquiry—except in very serious offences—and, with the consent of the prosecutor and accused, by the justice who made the order or some other justice of competent jurisdiction, or for certain offences, such as murder, by a judge of the Superior Court of criminal jurisdiction. This is to provide an alternative to having a bail review simply where the desire is to change the conditions of release. Take, for example, the situation when a person wishes to move from one house to another and where one of the terms has been that he must reside in one particular place.

Senator Laird: It just eliminates a hearing.

Mr. Sommerfeld: That is right.

Senator Godfrey: This seems to be an appropriate time to ask a general question. In the case of the famous Dr. Morgentaler, when there was an appeal about his bail, the judge made certain conditions, one of which was that he

could not give any speech about abortion. There followed a front-page article in one of the Toronto papers where a law professor said that the judge had no right to do such a thing. What are the provisions that would cover this?

Mr. Christie: I wonder, senator, if it would really be appropriate for us, as public servants, to comment on that.

Senator Godfrey: I am simply asking if there are provisions in the Criminal Code dealing with this type of condition. I am not referring specifically to the Morgentaler case. I am referring to provisions that might deal with this type of condition. Let us confine it to the aspect of interfering with the right to free speech.

Mr. Christie: Well, it would be an extremely difficult question for Mr. Sommerfeld or me to answer unless we saw the document and the terms of release and the circumstances in which the order was made.

Senator Godfrey: I am not talking necessarily now of the Morgentaler case. I am simply asking if there are provisions that cover such a situation in the Criminal Code.

The Chairman: Senator Godfrey, I do not think we really know what the conditions were. If my recollection is correct, Dr. Morgentaler was ordered not to comment on the trial just ahead of him.

Senator Godfrey: And he was also told not to make speeches.

Senator Croll: He is speaking tonight in Toronto. He is not talking about abortion, and that is all.

Senator Godfrey: I quite realize it would not be proper for him to make a comment on the trial.

The Chairman: It is my impression that those were the only restrictions imposed upon him. If Senator Croll goes to his lecture tonight, he can report to the committee tomorrow as to whether he spoke about his conviction or his trial.

Senator Godfrey: Well, let us forget about Morgentaler and the conditions imposed there. My question is simply as to whether there are provisions in the Criminal Code allowing a judge to impose conditions; and, if so, what are the provisions?

Senator Lang: A judge can impose a condition in certain cases, for example, that an accused may not drive a car.

Senator Laird: Yes, but I would think there must be a legislative basis for it.

Mr. Christie: There is a general provision in subsection 457(2) which gives a judge a general authority to require a person to give an undertaking with such conditions as the judge directs.

Senator Neiman: That is very broad.

Mr. Christie: They would presumably be reasonable conditions.

Senator Neiman: For example, there is a section which says, "as the judge or justice considers to be warranted". That leaves a wide discretion to the judge in certain conditions.

Mr. Christie: Well, if you look at section 457(4) you will see a number of things that the judge can do. A person may

be required to report at times to be stated to a peace officer or other officer designated in the order, or he may have to remain within a territorial jurisdiction provided for in the order, he may have to notify a peace officer or other person designated in paragraph (a) of any change in his address, employment or occupation, and so on. Then at the end there is a basket clause in paragraph (f) that he may be required to "comply with such other reasonable conditions specified in the order as the justice considers desirable."

Senator Laird: That is exactly what Senator Godfrey was trying to get at. He wanted to know if there was a legislative basis on which this could be done, and there is.

The Chairman: Provided that the conditions are reasonable.

Shall clause 54 carry?

Hon. Senators: Carried.

The Chairman: Then we come to clause 55.

Mr. Sommerfeld: When a person is released pending trial under these provisions of the Code there are a number of things that can happen to him. He can give a promise or undertaking to appear; he can enter into a recognizance, either with or without sureties; or he may simply be served with a summons or appearance notice.

Section 458 now authorizes a peace officer to arrest a person, with or without a warrant, who he believes on reasonable grounds has violated his promise to appear or his undertaking or recognizance, or where he has committed an indictable offence. It does not say anything about where there is an appearance notice or summons. This amendment enables him to arrest also in the case of the summons or the failure to appear on an appearance notice.

Senator Croll: What do you say the change is?

Mr. Sommerfeld: It extends his right to arrest a person to a summons and an appearance notice, whereas at present it is confined to a violation of his recognizance or his promise to appear.

The Chairman: Are there any other questions? Do clause 55, subclause (1) and clause 55, subclause (2) carry?

Hon. Senators: Carried.

The Chairman: We have deferred clause 45 and clause 46. The next subject matter concerns "Rules of Evidence in Rape Cases." We will deal with clause 8 first.

Mr. Christie: Mr. Chairman, since clauses 8, 44 and 66 really form one of those groups we were talking about, dealing with the same subject matter, I would suggest dealing with them together.

The Chairman: Certainly. Go ahead.

Mr. Christie: That series of clauses does four things under section 142 of the Criminal Code in relation to the following offences: rape, attempted rape, sexual intercourse with a female person under the age of 14, sexual intercourse with a female person between the ages of 14 and 16, and indecent assault on a female. These offences require the trial judge to instruct the jury that it is not safe to find the accused guilty in the absence of corroboration of the evidence of the victim. First, it is intended that that rule be abolished. The second point is that it is intend-

ed to restrict the right of cross-examination of the victim as to her sexual conduct with a person other than the accused in any proceeding in which the accused is charged with rape, attempted rape, and sexual intercourse with a female under the age of 14. The third point is that it is intended to encourage the court to protect the victims of those offences from publicity. Finally, it is intended to encourage the court to give consideration to changes of place of trial or change of venue in relation to such offences.

Dealing with the first and perhaps most important point, the abolition of the rule of corroboration, it is felt that that rule in modern times has no place in the criminal law, the theory being that if in any number of very serious offences the word of one witness can be pitted against the word of another, there is no special reason why in these trials involving women who are alleged victims of sexual abuse there should be a special rule of corroboration.

Senator Croll: When you talk of corroboration and of witnesses, is it not true that corroboration comes from other sources as well as from witnesses?

Mr. Christie: Yes, of course, but it would be possible, if the rule in section 142 is abolished, for a woman to accuse a person of having raped her, and, if believed by the court or, if it is a court composed of a judge and a jury, by the jury, for a conviction to be entered. That, of course, is a significant change in the law. But there might well be in a given case all kinds of corroboration which does not constitute corroboration of another witness.

Senator Croll: That was the point I was making.

Senator Godfrey: Is the judge permitted to mention corroboration if you abolish this requirement?

The Chairman: The requirement is being abolished.

Mr. Christie: The proper interpretation to be placed on it is that if you have a rule such as section 142, which requires a judge to instruct on corroboration, and Parliament abolishes that rule, the only reasonable interpretation is that Parliament, by abolishing the rule, means that it should no longer be applied.

Senator Godfrey: I can imagine certain cases in which a judge might say it is just one person against the other and that he should give some kind of warning. Even section 142, although it is dangerous, still provides that the accused may be found guilty even if there is no corroboration. That is quite clear.

Senator Laird: But you still have the doctrine of reasonable doubt.

Senator Godfrey: But they are entitled to find the accused guilty even if there is no corroboration . . .

Senator Croll: But the judge cannot comment on it.

Senator Godfrey: —if they are satisfied beyond a reasonable doubt that the evidence is true.

Mr. Christie: If Parliament enacts this change, the judge will not be able to instruct a jury that it is unsafe to convict in the absence of corroboration.

Senator Smith (Colchester): If he wants to make a point that the witness's credibility is not good, he will make that point anyway, because in practice the rule does not amount to a hill of beans. If the jury decides it is going

to convict, it is going to convict no matter what the judge says about that. If it decides it will let the fellow off, it will not matter if the judge tells the jury it ought to convict. I think it is a good thing to do away with this rule, but I do not see that it really played any great part in actual practice in the results of cases anyway.

Senator Croll: I think, Senator Smith, you will find that those comments by the judge really do have an effect on what the jury decides, because the jury pays attention to the judge, particularly in those cases. I have always felt that that rule was a bit dangerous, because the judge could say, "Here is the witness, on the one hand, but don't forget that this may or may not be corroborating evidence." I think the judge ought to stay out of it, and I think it is a good idea to abolish the rule.

Senator Smith (Colchester): I do not think it will make much difference in practice, that is all I am saying. Anybody who is hanging his hopes on this change as a great thing in practice, in terms of what the results of trials generally are, is going to be disappointed. That is all I am saying.

Senator Godfrey: This just worries me a little. I agree with the elimination of the section that requires the judge to do this, and I would think it would be even more so if the judge tells the jury that it is part of our law that he must tell them this. This would have an additional effect on the jury which would make them reluctant to convict; but if the judge, under all the circumstances, decides that because there is absolutely no corroboration whatsoever, and he is not too convinced, possibly, that the accused is telling the truth, under the general law would he not be permitted to make a comment to the effect that in the circumstances of the case he thinks it would be rather unwise, or something to that effect, to convict, when there is no corroboration? Are you suggesting that because of the repeal of this section he would not be permitted to do that?

Mr. Christie: That is what I am saying.

Senator Lang: Could he not just include that in his charge to the jury?

Mr. Christie: He cannot.

Senator Neiman: The judge has latitude at all times to assess the evidence as it is presented and to give his own opinion as to the weight to be given to the evidence of any of the parties concerned. I am sure that he will still have that latitude to point out to the court that the complainant's evidence is rather tenuous, and simply leave it up to the jury, if there is one, to decide what weight is to be given to it. I do think, however, that this is an important and significant amendment to our law, because there is no doubt that many juries in the past have felt bound by the warning that was given by the judge, and have felt constrained to look for other corroborative evidence that in many cases simply was not there. I do think, therefore, that this is a significant change, and I think it is a very welcome one.

Mr. Christie: I agree with what you say, senator, but I still would have grave doubts as to whether he could, in effect, circumvent the repeal of section 142.

Senator Neiman: I am not suggesting that, of course, Mr. Christie, but I am saying that the trial judge does have the option in his charge to give his personal opinion as to the weight of the evidence that has been presented.

Senator Laird: But the big protection is, is it not, that he must, in his charge, say, "You must be convinced beyond a reasonable doubt." That is the big protection.

Senator Neiman: Oh yes, I agree entirely.

Mr. Christie: As far as cross-examining the complainant on her previous sexual behaviour is concerned, with a person other than the accused, this is based on a belief that there has been a long history of women complainants in sexual cases being subjected to unreasonable and often vicious and unnecessary cross-examination. That is the basis upon which this amendment is founded, and it will be accomplished by providing that the accused, or his counsel, may not ask the complainant any questions concerning her sexual conduct with a person other than the accused unless notice is given to the prosecutor and the court, and the court decides, after a *voir dire*, *in camera*, that the weight of the evidence sought to be adduced by such questions is such that it would be unjust, in the circumstances of the case, to exclude it.

There is a protection built in, therefore, for the accused, in this provision. The notice and the evidence given on the *voir dire* may not be published or broadcast, for obvious reasons, and it is made an offence punishable on summary conviction to contravene the prohibition against publication or broadcast. These provisions will apply equally to trials and to preliminary inquiries in relation to the offences that I have mentioned.

Senator Neiman: I just have one comment with regard to that clause, Mr. Chairman. I think sometimes the accused needs the protection of the court and protection from publicity, because there has been more than one case where somebody has been accused unfairly, has suffered a great deal in his reputation in the community and has even lost jobs because of an accusation of rape which is subsequently proved to be unfounded. It seems to me that protection from publicity should, in cases where it is warranted, apply equally to an accused until he is found guilty.

Mr. Christie: Let me say this, that representations have been made that the publicity given to trials of rape cases sometimes discourages a victim from reporting the crime and from testifying. If these representations are well founded, it must be conceded that it is unfortunate that the law should have such undesirable effects. The amendment proposed in clause 44 goes some distance towards correcting this situation by doing these four things:

(a) empowering a presiding judge or magistrate to exclude the public for all or part of any proceeding in which an accused is charged with rape, or a similar sexual offence, in the interests of the proper administration of justice;

(b) requiring the presiding judge, magistrate or justice to give his reasons for not making an exclusionary order in each case in which an application was made for one;

(c) requiring a presiding judge, magistrate or justice to make an order restricting publication of the identity of the complainant and her evidence in any such proceeding; and finally,

(d) making contravention of a non-publication order a summary conviction offence.

As far as encouraging the change of venue is concerned, section 527 of the Criminal Code permits a trial judge to order a change of place of trial upon the application of the

prosecution or the accused if such change is expedient to the ends of justice. It is obvious that the complainant in a rape case is more likely to be embarrassed if she is required to testify in a small community than she would in a large metropolitan area. Under the present law, the prosecution may apply for a change of venue so as to protect the complainant from embarrassment; but the presiding judge may deny the application upon broad grounds, as stated in section 527, without reference to the particular case in which the application is made.

The amendment proposed in clause 66 obliges the presiding judge to focus on the facts of the particular case by requiring him to state his reasons for refusing to make an order for change of venue in this class of case.

So this whole series of proposed amendments, senators, is, as you have heard from me, designed, the government believes, to make the trial of sexual crimes, in effect, more equitable and more fair, and to bring about more just results in the end.

Senator Godfrey: What about Senator Neiman's question? Is there any way the accused can be provided with some anonymity in the face of an uncorroborated accusation, which can do him just as much harm as the complainant?

Senator Neiman: Subsection (3) of Clause 44 says that the judge shall make an order directing that the identity of the complainant not be published.

Mr. Christie: The complainant, of course, being the female.

Senator Neiman: I agree with that wholeheartedly. However, as I say, in certain circumstances the accused who is subsequently found to be not guilty of the offence is very much harmed by this type of trial and publicity, and I think he should be afforded some protection by the law.

Senator Laird: Perhaps we should amend that.

Senator Croll: I have not had a chance to look into it, but I think there is a section which allows the judge to make such an order as is suggested here, under those circumstances. I cannot think of it at the moment, but I believe I have seen it done.

Senator Godfrey: That is what we want to find out from the experts.

Mr. Christie: I forget the number of the section, but there is a power for the judge to exclude the public under certain circumstances. However, I do not think there is any general power in a judge under the existing law to say that the accused's name shall not be disclosed under any circumstances.

Senator Croll: Under circumstances where the public is excluded and things are done behind closed doors there is provision so that he can, and often does, forbid the use of the name of the man charged.

Senator Laird: Senator Neiman is getting at some other point, and a good one too.

Senator Godfrey: There is a difference between Senator Croll and you on that point, obviously.

Mr. Christie: I will certainly put it on our check list.

Senator Croll: Yes, put it on your check list. It occurs to me that I have seen it done.

Senator Neiman: Under subsection (1) there is provision for the exclusion of the public in certain circumstances.

Senator Godfrey: I can imagine certain cases in which it would be justifiable for the judge to order, unless the accused is found guilty, that his name shall not be published. I do not know why the complainant should be the only one to be protected.

Senator Croll: His name jumps out at you the day he is arrested and charged with rape, and then he cannot do much about it; the newspapers have it and you are stuck. After that the judge can do what he likes, but it does not do much good as far as his name is concerned.

Senator Godfrey: You could say the same about the complainant.

Mr. Christie: We will put it on the check list.

Senator Langlois: Are we standing clause 44?

The Chairman: I was going to ask that. Shall we stand the three clauses until the questions are answered?

Senator Godfrey: It is just that one question on clause 44.

Senator Croll: Are we passing it?

Senator Godfrey: I would like to consider that point.

Senator Laird: Yes, let us think about it.

The Chairman: Then shall clauses 8 and 66 carry?

Senator Neiman: We have not dealt with clause 66.

The Chairman: We will defer clause 44. Clause 66 deals with the change of venue.

Mr. Christie: We have done that.

The Chairman: I thought we had. Shall clause 66 carry?

Senator Laird: I hope so. There is no introduction of any legal principle there at all. You can change the venue of anything if you give reasons.

Senator Croll: There was always a change of venue. What is new?

Senator Laird: There is not anything new.

Mr. Christie: Yes. What is new is that the judge, instead of having a general power of simply saying, "I am not prepared to, because I do not think it is in the interests of justice," has to apply his mind to a particular case and give reasons in relation to that case.

Senator Croll: Meaning there is an appeal.

Mr. Christie: No, there is no appeal.

Senator Godfrey: He just cannot act in an arbitrary fashion if he has to give reasons.

Senator Croll: He can give arbitrary reasons.

Senator Godfrey: That is the point of the clause.

Senator Croll: Usually a judge will give some reasons; he will not just say, "No." He will normally say it is for this and that reason, will he not?

Senator Godfrey: If so, I would not think the clause is required.

The Chairman: In the bill, when first presented, the explanatory note reads:

This amendment would oblige a court or judge to give reasons for not making an order changing the place of trial in cases where the accused is charged with rape or another sexual offence mentioned in section 142(1) involving a female.

Senator Croll: That does not help any.

The Chairman: It just explains it.

Senator Laird: It is just the reasons.

Senator Godfrey: He will not be so arbitrary if he has to give reasons.

Senator Laird: I think Senator Croll is right in saying that reasons were always given.

Senator Godfrey: I have known judges, when they are against you, not to give reasons because they know they cannot.

The Chairman: I take it that clauses 8 and 66 carry?

Hon. Senators: Carried.

The Chairman: Clause 44 is deferred until we get further explanation. Is that agreed?

Hon. Senators: Agreed.

The Chairman: The next matter is, "Creating Disturbance in Public Places," clause 9.

Mr. Christie: Section 171 of the Criminal Code provides that:

Every one who

(a) not being in a dwelling-house causes a disturbance in or near a public place,

(i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,

(ii) by being drunk, or

(iii) by impeding or molesting other persons, . . .

is guilty of an offence . . .

There are other provisions relating to section 171, but they simply refer to those basic provisions.

In Vancouver, according to public prosecutor of that city, there have been cases involving I suppose young people particularly, of these so-called house parties, where there are perhaps 150 or more people milling around, shouting, screaming and generally raising the devil; the police are summoned; obviously there is a disturbance; the neighbours are upset and so on; a charge is laid, but the courts have held that the evidence of the police officers along is insufficient to establish that there was a disturbance. In other words, you have to find some citizen or citizens in the vicinity who are prepared to come forward and testify that the gathering of the group and what went on, the drinking and the swearing, caused a disturbance to them. Often it is apparently not easy to find those witnesses; for a number of reasons they are not prepared to come forward. The effect of this amendment would be to allow a court, on the basis of the testimony of police officers

gathered at the scene of a disturbance of this kind, who testify as to what they saw, to enter a conviction.

Senator Smith (Colchester): In that case was there evidence by the police of noise and swearing?

Mr. Christie: There was evidence by the police, which we understand was not acceptable to the court, because the court took the position that the police officers were not people who were contemplated by the section as being disturbed.

Senator Smith (Colchester): I am wondering whether the evidence of the police was to the effect that they heard noise, swearing and shouting within hearing distance of So-and-So, a private citizen.

Mr. Christie: I can only assume that must have been the case, because the prosecutor would not have written in and complained that he has been unable in some of these instances to secure convictions on the basis of police evidence. The police evidence surely could have only been to the effect of what they saw, which was of—I do not know what you would call them—wild and woolly parties that break out once in a while.

Senator Smith (Colchester): Did the case go to appeal?

Mr. Christie: I do not know.

Senator Smith (Colchester): It seems to me an extraordinary thing if the court had evidence of noise and that sort of thing, and ordinary citizens were within hearing distance of it, that the court could say there was not a disturbance.

Mr. Christie: The cases we rely on are the cases referred to us by the Crown Prosecutor for the City of Vancouver. But I might add that the recommendation was considered and approved by the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation at their meeting in August 1973. That Criminal Law Section is made up of the Deputy Attorney General of Canada, myself, Mr. Sommerfeld, all provincial deputy attorneys general except one, and other people both on the defence and prosecution sides interested in the administration of the criminal law.

Senator Smith (Colchester): That is a very impressive committee, but I still find it difficult to understand if the evidence was there, no matter by whom it was given, that the court could hold that there was no disturbance.

Mr. Christie: The court did not hold that there was no disturbance; the court held that the right people did not testify to being disturbed.

Senator Neiman: But, Mr. Chairman, is that section not extremely wide in its possible application? I have serious reservations about the amendment. I feel it is far too widely open to abuse, quite frankly. I am speaking now of the amendment. Any group of young people who might not be in the good books of a local police constable could very easily be charged under that and convicted.

Senator Godfrey: It only says "may infer". Surely the police are entitled to give evidence and to be believed.

Senator Smith (Colchester): We are not arguing that.

Senator Godfrey: No, but Senator Neiman is. She agrees with the law as it is in Vancouver which says that the police cannot give evidence and should not be believed.

Mr. Christie: It isn't that they could not give evidence, but it said that they were people who were not members of the public within the contemplation of the section and were not people whom the section envisaged as being disturbed.

Senator Croll: But that incident took place in a house, and no one from the house came forward, but the police from the outside came forward and perhaps those were the circumstances that justified the decision.

Senator Smith (Colchester): I wonder if we could have some further particulars of this case before we are asked to pass on this finally. It seems to me to be a most unusual type of provision.

Senator Neiman: I would like some more evidence myself on this because I think this particular clause in here says "where they give evidence as to the conduct of a person or persons whether ascertained or not." How can you register a conviction in this sense?

Mr. Christie: This is the problem that they run into. When they have a mob milling around they cannot say, "I know that person to be John Doe or John Smith." It is impossible. You are dealing with a small mob, and sometimes it is not so small.

Senator Neiman: But you still have to convict a specific person.

Mr. Christie: But they bring those people in as persons who were there.

Senator Smith (Colchester): It may be perfectly justifiable, but it seems extremely strange to one who is used to dealing with the criminal law in the courts.

Senator Godfrey: I do not think I agree with you on that. All they are really saying is that in the absence of other evidence, they may infer from the evidence, meaning that this is evidence that may be presented—it does not say that the police were the ones disturbed—they may infer from the evidence that a disturbance, as described, took place, and all it says is that the police are entitled to give evidence that is not corroborated.

Senator Smith (Colchester): No, no, not at all.

Senator Godfrey: Well, it says, "in the absence of other evidence or by way of corroboration of other evidence may infer from the evidence of a police officer", and that is that uncorroborated evidence of a police officer. They are not saying that the police themselves are disturbed or that this has to be proved.

Senator Smith (Colchester): That is not the way I read it.

Mr. Christie: I do not know if this will help you, but in my briefing notes I learn that in June 1972 the City Prosecutor for Vancouver complained to the department that over the years his office had experienced difficulty in obtaining convictions under paragraphs (a) and (d) of this section because the courts were consistently refusing to find on the evidence of police witnesses alone that there was a disturbance within the meaning of those paragraphs. They were insisting, so the complaint went, that members of the public should be called to prove the case. However, for obvious reasons, it was difficult for the Crown to do so.

Senator Godfrey: That is my position, and that is what I think this section means.

Mr. Christie: As I say, that case was placed before the Uniformity Commissioners.

Senator Smith (Colchester): That does not convince me a bit. I have seen things passed by the Uniformity Commissioners that did not seem to me to be very good law, so while I respect their assembled wisdom and take very seriously any matter which they have considered and decided for or against, I do not really, with all respect, regard it as being conclusive.

Mr. Christie: I agree it is not conclusive.

Senator Godfrey: All I am saying is that what you have just said now supports my position.

Senator Smith (Colchester): Well, I am not satisfied at all. I believe that this is a very fundamental change in the law and I am not prepared to yield quietly until I have a different understanding from that I now have.

Senator Godfrey: Why do you think it is a fundamental change? The law now simply says that you may convict in connection with section 171(a) on the uncorroborated evidence of a police officer.

Senator Smith (Colchester): What they are saying now is that in the absence of other evidence—and let us leave out for the moment your obsession with corroboration—a summary conviction court may infer from the evidence of a police officer relating to the conduct of a person or persons, whether ascertained or not, that the disturbance described in the paragraph was caused or occurred.

Senator Godfrey: Now you are talking about “whether ascertained or not”?

The Chairman: That is a very important point.

Senator Neiman: That is what we object to, that “whether ascertained or not.”

Senator Godfrey: Well, you have to ascertain who the accused is in the first place.

Mr. Christie: But you may pick up six people out of a crowd of 150; you cannot ascertain who the others are; so what is wrong with saying, “We ascertained who the accused were but not the other 144 rounded up”?

Senator Croll: That is what is says.

Mr. Christie: That is what it says.

Senator Croll: How else do you deal with a mob unless you pick up half a dozen?

Senator Laird: Maybe it was meant to deal with political conventions!

Senator Lang: The fundamental concern of the committee may be that this sort of section does give the police powers to arrest and to convict on their evidence alone, which is contrary to some fundamental concepts in the legal system.

Senator Godfrey: If you can convict on the uncorroborated evidence of an accused in a rape case, I do not see why the police cannot be believed as well. You have to use discretion.

Senator Smith (Colchester): No one is objecting to the police being believed.

Senator Godfrey: I am sorry, but Senator Lang was just doing that.

Senator Smith (Colchester): Mr. Chairman, I find it extremely difficult to understand, if the policeman whose evidence is believed says, “Messrs. X, Y and Z were standing on the street corner and I heard Mr. X use the following language in a loud voice,” why that is not causing a disturbance. What necessity is there to enlarge upon the provisions of the law this way? He does not have to infer anything. He just has to listen to the policeman’s evidence and find that it was a public place and that such-and-such was a noise.

Mr. Christie: That is quite correct, but you have put just one type of case. There are different types of cases arising under this provision. The prosecutor from Vancouver put the type of case I put.

Coming back to your point, Senator Neiman, “whether ascertained or not”, that means that you could have this mob and you might only get half a dozen out of them after quite a fight to get them into a couple of police cars. But they could explain what the rest of the mob were doing by throwing beer bottles around and just raising trouble of all kinds generally. That is what the word “unascertained” is talking about.

Senator Langlois: Mr. Chairman, there is a danger that you could have an innocent person convicted under this simply because he was there at the time of the disturbance without having taken part in creating it.

Senator Croll: You have to leave the spectator to the judge; he does not usually convict spectators. At any rate, it seems the law needs clarification. It has always been difficult for the police to deal with these mobs, and this is what they are trying to do here. It so happens that Vancouver has a bad reputation in that respect.

Senator Smith (Colchester): Trying to correct bad reputations does not necessarily make good law.

The Chairman: What do I take to be the view of the committee?

Senator Croll: I move this section.

Senator Godfrey: I second the motion.

The Chairman: All those in favour? Those opposed?

Senator Langlois: Mr. Chairman, before you declare the motion carried, I would draw your attention to the French text. It would seem that the French text is even more thorough than the English text in using the words, “même indéterminée.” I think that ought to be changed.

The Chairman: Would you prefer “déterminée ou indéterminée”?

Senator Langlois: This would indicate that even the person who was not there could be convicted. It goes much further than the English text.

Senator Laird: Yes, that is a good point. With respect, Mr. Chairman, I would suggest that our witnesses should examine the French text there to determine whether or not it really corresponds to the English equivalent, “whether ascertained or not.” I have doubts about it myself. I think Senator Langlois has raised a good point.

The Chairman: Shall we defer the clause until the officials have examined the French text?

Senator Godfrey: I believe we have approved the English text, have we not? I would suggest deferring the French text and leaving it to the officials to make sure that the French says the same thing as the English.

Senator Croll: What does it mean in French, as you see it, Senator Langlois?

Senator Langlois: A person who was not even there could be convicted.

Mr. du Plessis: The purpose here is to determine that a disturbance took place. Whether or not all the people who participated in the disturbance are known is not a significant fact, in my opinion.

Senator Langlois: That is your interpretation of the text when you say that, is it?

Mr. du Plessis: It is an interpretation, I agree.

The Chairman: Shall the clause carry, subject to further examination of the French text by the Department of Justice?

Hon. Senators: Agreed.

The Chairman: The next item is clause 10, "Slot Machines."

Senator Laird: Are there any slot machines still around?

Mr. Christie: Quite a few. The purpose of this amendment is to allow the lawful existence and use of slot machines if all a slot machine does by way of reward is dispense additional free games.

Senator Godfrey: A friend of mine bought a pinball machine over the weekend. Does this apply to pinball machines?

Mr. Christie: Yes.

Senator Laird: If you associate with criminals.

Senator Lang: He put it in in anticipation of passing this clause.

Senator Godfrey: An ordinary pinball machine that you might find in a recreation room or a basement? I was asking you about this person I knew. I knew they were illegal at one point, but I could not follow the reason. Do you mean the sort of thing where you have a ball, and if you are very good you get a score of 30,000, or if you are very bad, like me, you get 3,000? Is that illegal?

Mr. Sommerfeld: Mr. Chairman, there are amusement machines—I think the most typical example is the pinball machine—that would fall within the definition of a slot machine as it exists now in section 180 of the Code. The object is simply to exclude from that definition of a slot machine, machines that are played for amusement, that are not gambling devices, and that do no more than return free games.

Senator Laird: That makes sense.

Senator Godfrey: So I was illegal, then, when I was playing with this thing over the weekend, but I will not be if this bill passes.

Senator Laird: If this passes you are home free.

The Chairman: Does clause 10 carry?

Hon. Senators: Carried.

The Chairman: The next item is "Off-Track Betting", clauses 11, 62(c)(iii).

Mr. Christie: The object of these amendments is to strengthen the existing provisions of the Criminal Code in relation to bookmaking, and what is commonly known as "off-track betting." I might say that the attorneys-general of the provinces expressed general agreement with this proposal at a meeting that was held in 1973.

Under section 186 of the present law, book-making, pool-selling and betting are indictable offences punishable by a maximum period of two years. Placing or agreeing to place a bet on behalf of another for present or future consideration is also an indictable offence punishable by a maximum of two years. The latter is the basis of what is commonly known as "off-track betting".

The proposed amendments achieve their objectives in the following ways:

(1) the ambit of section 187, dealing with off-track betting, would be increased to include two things, namely, engaging in the business or practice of placing or agreeing to place bets on behalf of other persons for consideration or otherwise, and holding oneself out, or allowing oneself to be held out as engaging in the business or practice of placing bets, or agreeing to place bets on behalf of other persons, whether for consideration or otherwise.

The offence of operating an illegal messenger service will become, like the offence of book-making, one within the absolute jurisdiction of a magistrate, and provision under both clauses will be made for a minimum term of 14 days for a second offence, and a minimum term of three months for each subsequent offence. This, of course, does not affect the two years you can get for the first offence. You can also get two years maximum for the second, and two years maximum for the third.

Senator Neiman: Mr. Christie, may I ask what the meaning of this subclause (b) is, in 187: "Whether for a consideration or otherwise"? Does this mean that even if you place a bet at the track on behalf of a friend it is going to be illegal?

Mr. Christie: No, because you would not be engaging in the business.

Senator Godfrey: And it is not for consideration.

Senator Neiman: It says "business or practice."

Mr. Christie: Or the practice. If you occasionally place a bet for a friend you would not be engaging, in our view, either in the business or the practice of placing bets.

Senator Lang: Were there some loopholes in the other section that this closes?

Mr. Christie: That is right. The other section did have loopholes that we think this will close off.

Senator Godfrey: When no charge is made for placing a bet, but when a small charge is made for cashing a winning ticket, no offence under this section occurs. I suppose that is the loophole.

Senator Neiman: I still do not understand why we worry about people who place bets on behalf of their

friends for no consideration, even if they do it every week. What is the real criminal offence there?

Senator Laird: We do not do that. That is not an offence, is it?

Mr. Christie: The offence is engaging in the business or practice.

Senator Laird: For consideration.

Mr. Christie: The trouble is, if you leave the "or practice" wide open, then you will have these so-called off-track bookmaking shops flourishing again.

Senator Neiman: I meant, of course, for no consideration. I quite agree with the rest of it.

Mr. Christie: One of the difficulties they have had is in proving consideration. They have had great difficulty in that.

Senator Lang: They used to sell betting papers, and things.

Mr. Christie: Yes. They used all kinds of dodges. One would be to sell you a dope sheet for 50 cents, or 75 cents or a dollar, and the dope sheet might be worth 10 cents. They used these different dodges to get round the "no consideration" provision.

Senator Smith (Colchester): Mr. Chairman, I wonder if I might ask whether the provision of minimum penalties is in line with the general thinking about the kind of punishment that ought to be imposed for any offence, whether this or some other.

Mr. Christie: You are quite right, senator. There has been a general philosophy going back to the mid-1950s with regard to doing away with minimum punishments. They have largely been done away with, except in certain areas. One of these we have just covered, namely, that of drinking and driving. Failure to take the breathalyzer test is another one. This is another type of offence, and there are a few that it is felt, as a matter of policy, can only really be effectively enforced with minimums. You are, however, quite right; the trend has, over the years, been away from minimum penalties.

Senator Smith (Colchester): Does it then follow that it is the feeling that the courts have been a little lenient with offenders convicted of this kind of offence?

Mr. Christie: Well, I would not like to answer that question because, quite frankly, I do not know what the figures are on what the courts have been doing in relation to these particular offences. I cannot answer that question, offhand.

Senator Croll: I cannot say much about the leniency. I saw a report of a fine of \$50,000 about a week ago imposed on a fellow who was doing a little of this business. I thought that was not too lenient.

Mr. Christie: Well, there have been one or two of that magnitude, senator, but if you can believe the figures that are involved in making book, and in off-track betting, \$50,000 is not all that much money.

Senator Croll: You have to make a lot of book to win \$50,000.

The Chairman: Perhaps it was a multi-national corporation!

Senator Neiman: I am against a minimum sentence for an offence such as this. I can see it when we are dealing with crimes of violence, but I think the trend of our thinking should surely be against minimum sentences here, because that raises all these other problems of no discharges or conditional discharges which we discussed in another context. I feel that is a clause I really cannot support.

Senator Godfrey: Perhaps three months seems a little excessive.

Mr. Christie: For the third time around.

Senator Smith (Colchester): Surely we can rely on the courts in these kinds of offences, in any event, to temper the punishment to the seriousness of the offence.

Senator Neiman: Quite often, as Senator Croll said, a fine is much more effective than 14 days in jail. This business is lucrative enough in any sense. It is just the principle of imposing minimum sentences for any of these crimes, which are essentially against property, and certainly not against the person, that I think we should move away from.

Mr. Christie: I think the theory in relation to the gambling crowd is that they understand jail a lot better than they understand the imposition of fines.

Senator Croll: You are not quite right. If you catch the top guy, he understands jail. Usually they catch half a dozen of the people who are working for him, and to them the fine is the serious matter. If he goes to jail the top guy says, "While you are away we will pay your salary," and that sort of thing. The top man does not want to go to jail.

Mr. Christie: Let me ask you this question, Senator Croll. You talk about the little man being worried about paying a fine. Who really pays the fine?

Senator Croll: I agree sometimes what you suggest is true, but not always.

Senator Godfrey: I am a little puzzled. There is no mention of a fine here. Is there some other clause which provides a fine in addition, or is it only this?

Mr. Christie: There is a general section.

Senator Godfrey: You can have a fine in addition?

Mr. Christie: Or in lieu of, except for the minimum, of course; you could not impose a fine if there was a minimum.

Senator Godfrey: But you can send him to jail for two weeks and fine him \$50,000?

Mr. Christie: Yes.

Senator Godfrey: In certain circumstances there should be both.

The Chairman: What is the view of the committee on these clauses?

Senator Lang: I support their adoption.

Senator Laird: I am with you.

Senator Godfrey: I think they should retire from the business after two convictions. I am on your side.

Senator Laird: The whole idea is to make it tougher. Frankly, I am in favour, of it, as is Senator Lang.

Senator Lang: It is probably to ensure the lucrative nature of on-track betting!

The Chairman: What is the desire of the committee on clauses 11 and 62(c)(iii)?

Senator Laird: Two of us are in favour of agreeing.

Senator Lang: Yes, I am for adoption.

Senator Laird: I agree.

Senator Neiman: I dissent only on the minimum sentence. I agree with the rest.

The Chairman: Then I take it that is carried?

Hon. Senators: Carried.

The Chairman: The next item is, "Sale of Lottery Tickets from One Province to Another," clause 12.

Mr. Christie: As honourable senators are aware, in 1969 in Criminal Code was amended to allow provinces to run lotteries or to license charitable or religious organizations to run lotteries. The word "lottery" is very broad in its meaning and includes bingo and pretty well every form of gambling, except, I think, dice, three-card monte and another form of gambling which escapes me for the moment. The proposals here really all accrue to the benefit of the provinces. First, they would permit the government of a province to agree with the government of another province that the tickets of a lottery scheme of one province, whether a provincial lottery scheme or one licensed by the province, could be sold in that other province. In other words, an agreement might be entered into between Saskatchewan and Manitoba whereby Manitoba's lottery tickets could be sold in Saskatchewan, either the government lottery tickets or a scheme licensed under Manitoba law.

Senator Haig: What happens to a lottery ticket that is drawn to win which has not been sold? There was a ticket drawn the other day which would have won someone a million bucks which was not even sold.

Senator Laird: How could that happen?

Senator Haig: It happened.

The Chairman: That has nothing to do with this.

Senator Haig: I wondered whether there was any provision for it. Somebody got that million bucks.

Senator Langlois: The million bucks is an additional prize at the next lottery.

The Chairman: That is what they have done.

Senator Langlois: That is what they have done.

Senator Lang: Is the sale of Olympic lottery tickets in Ontario illegal until this is passed?

Mr. Christie: That is perfectly legal. There is a special arrangement under the Olympic legislation.

Secondly, it provides that a lottery scheme licensed in one province may also be licensed in another province by that other province, with the consent of the first province. In other words, you might have a scheme licensed in Saskatchewan, and then you could license the entire scheme in Manitoba if Manitoba agreed to Saskatchewan really running the whole show, although Manitoba would undoubtedly want a piece of the action.

Senator Laird: There is nothing wrong with that, is there?

Mr. Christie: Finally, there is this minor point. It would permit a person in one province who manufactures tickets for a lottery scheme to sell or ship such tickets to another province for the purpose of a lottery scheme that is lawful in that latter province. For example, there might be a printer in Toronto who prints lottery tickets, but no printer in, say, Prince Edward Island who has either the facility or the inclination to get into the business of printing lottery tickets. It simply means that if there is a legal lottery in Prince Edward Island the Toronto man could print the tickets for sale in P.E.I.

The Chairman: I do not think anybody has any objection to that. Shall clause 12 carry?

Hon. Senators: Carried.

The Chairman: Clause 13, "Constructive Murder."

Mr. Christie: This arises out of a judgment in the case of *Regina v. Govedarov* in which the meaning of the word "burglary" in the constructive murder provisions of the Criminal Code was called into question. The word "burglary" appears nowhere else in the Criminal Code. This case involved three persons charged with non-capital murder, and arose out of the death of a person who was employed as a dishwasher at a restaurant. On the evidence, the accused used a crowbar in the course of a carefully planned break-in to a restaurant to steal money in the safe, and he struck the dishwasher and killed him. The question was as to whether or not he had broken in and this was a burglary that he was committing. The Ontario Court of Appeal held that that was not burglary, because burglary meant, apart from definition in common law, breaking into a dwelling house. The change in the definition will simply provide that instead of referring to burglary we will simply refer to section 306, which means breaking and entering.

Senator Laird: The whole idea is to deal with what happened in that case.

Mr. du Plessis: Mr. Chairman, I wonder if the witness could tell me where the term "constructive murder" comes from.

The Chairman: It is as opposed to "destructive", I suppose!

Mr. Christie: The heading here is "Murder in the Commission of Other Offences", but what is known throughout the profession as "constructive murder" is found in section 213 of the Criminal Code, and that is also where you will find the word "burglary" that gave all the trouble.

The Chairman: Shall clause 13 carry?

senators. We had agreed at our last meeting to adjourn until tomorrow when the Senate rises.

Hon. Senators: Carried.

The Chairman: I think we should stop here, honourable

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada



FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 31

WEDNESDAY, FEBRUARY 25, 1976

Second Proceedings on Bill C-71 intituled:

**“An Act to amend the Criminal Code and to make
related amendments to the Crown Liability Act,
the Immigration Act and the Parole Act”**

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

AND

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(19)

**Ex officio* member

(Quorum 5)



Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, 18th February, 1976:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Perrault, P.C., for the second reading of the Bill C-71, intituled: "An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, February 25, 1976
(49)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 3:30 p.m., the Chairman, the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg, Laird, Croll, Flynn, Godfrey, Lang, Langlois, McGrand, Neiman, Robichaud and Smith. (11)

Present but not of the Committee: The Honourable Senators Haig and McElman. (2)

In attendance: Mr. R. L. du Plessis, Acting Law Clerk and Parliamentary Counsel.

The Committee resumed its examination of Bill C-71 intituled "An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act".

The following witnesses, from the Department of Justice, were heard in explanation of the Bill:

Mr. D. H. Christie, Q.C.,
Associate Deputy Minister;
Mr. S. F. Sommerfeld, Q.C.,
Director, Criminal Law Section.

As agreed at its meeting of Tuesday, February 24, 1976, the Committee continued to examine the Bill by clauses or groups of clauses arranged by officials of the Department of Justice by *subject matter*, rather than by usual numerical order of the clauses.

Messrs. Christie and Sommerfeld provided explanations for each clause examined by the Committee. The witnesses then answered questions.

The Chairman called clauses 44, 45 and 46. After debate the said clauses carried.

Clause 9 had been carried at the previous meeting subject however to the requirement that the French text of the said clause be examined by officials of the department of Justice and that the witnesses report to the Committee on their findings. The witnesses made a statement. After discussion, Clause 9 was allowed to stand for renewed consideration.

Mr. Sommerfeld tabled a document entitled "Convention on Internationally Protected Persons" which had been required by members of the Committee in relation to Clauses 2(1), 3, 33 and 34.

Clauses 14, 15, 16, 17, 18, 20, 72, 85, 102, 19 and 101 were allowed to stand.

Clauses 21, 22, 22.1, 23, 24, 25, 30, 31, 32, 62A et B carried.

On clause 26, The Honourable Senator Flynn moved that Clause 26 be deleted and the subsequent clauses be renumbered accordingly.

The question being put, the motion was declared lost.

Clause 26 carried.

Clause 27 was allowed to stand.

Clauses 28, 29, 35, 36, 37 and 38 carried.

Clauses 39, 59 and 76 carried, subject however to the requirement that the French text of the said clause be examined by officials of the Department of Justice and that the witnesses report to the Committee on their findings.

At 5:20 p.m., the Committee adjourned to Thursday, February 26, 1976 at 11:00 a.m.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, February 25, 1976.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-71, to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act, met this day at 3.30 p.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, there was a question which I intended putting to the committee yesterday afternoon but did not. Does the committee feel that it wants to hear any other witnesses before we complete our consideration of this measure? In the committee of the other place they heard from the Canadian Bar Association and the Toronto Police Association. I do not think that it is necessary to hear other witnesses, but I shall of course abide by the wishes of the committee.

Senator Flynn: Well, Mr. Chairman, we can see how it goes.

The Chairman: Very well, let us leave the decision until later.

Senator Flynn: I mean, how can we decide in advance? We may have had enough.

The Chairman: Well, honourable senators, to proceed with our study of Bill C-71, there were three clauses which we reserved yesterday. They were clauses 44, 45 and 46. Are you prepared to answer on those clauses today, Mr. Christie?

Mr. D. H. Christie, Q.C., Associate Deputy Minister, Department of Justice: Yes, Mr. Chairman. I am.

So far as clause 44 is concerned, I have here the transcript of what transpired yesterday and I shall, if I may, read the relevant portions:

SENATOR NEIMAN: Subsection (3) of Clause 44 says that the judge shall make an order directing that the identity of the complainant not be published.

MR. CHRISTIE: The complainant, of course, being the female.

SENATOR NEIMAN: I agree with that wholeheartedly. However, as I say, in certain circumstances the accused who is subsequently found to be not guilty of the offence is very much harmed by this type of trial and publicity, and I think he should be afforded some protection by the law.

SENATOR LAIRD: Perhaps we should amend that.

SENATOR CROLL: I have not had a chance to look into it, but I think there is a section which allows the judge to make such an order as is suggested here,

under those circumstances. I cannot think of it at the moment, but I believe I have seen it done.

SENATOR GODFREY: That is what we want to find out from the experts.

MR. CHRISTIE: I forget the number of the section, but there is a power for the judge to exclude the public under certain circumstances. However, I do not think there is any general power in a judge under the existing law to say that the accused's name shall not be disclosed under any circumstances.

SENATOR CROLL: Under circumstances where the public is excluded and things are done behind closed doors there is provision so that he can, and often does, forbid the use of the name of the man charged.

SENATOR LAIRD: Senator Neiman is getting at some other point, and a good one too.

SENATOR GODFREY: There is a difference between Senator Croll and you on that point, obviously.

MR. CHRISTIE: I will certainly put it on our check list.

Well, Senator Croll, I have put it on our check list, I have done as careful a survey as time would permit, and I have checked with other people who are experienced in the criminal law. My answer is still the same as it was yesterday, that there is no such general power.

The Chairman: Shall clause 44 carry? This comes under the heading of "Rules of Evidence in Rape Cases". We have already approved clauses 8 and 66.

Senator Godfrey: I think, Mr. Chairman, we should have a discussion on Senator Neiman's point. I am just thinking out loud, but I think it is worthy of discussion. If you do have a case, and you are now permitting a person to be prosecuted on the uncorroborated evidence of a complainant, I can imagine certain cases where there might be some doubt as to whether or not it would be fair if the accused's counsel made an application and the judge decided in all the circumstances to do so because they were going to withhold the name of the complainant. It is a case of equal rights for men.

Senator Laird: Would you think then there should be added to clause 44(3) words which would give the same power to preclude the use of the name of the accused? Is that what you had in mind, Senator Neiman?

Senator Neiman: Yes, I thought counsel for the accused should be able to make an application in appropriate circumstances and that such should be allowed in appropriate circumstances.

Senator Godfrey: It would not be quite the same because it would be mandatory if the application were made by the prosecutor. The appropriate section says, "shall". It would, of course, be an unusual case.

The Chairman: Well, honourable senators, I am wondering—and here let me point out that I am not a criminal lawyer. Senator Neiman's suggestion is that an accused being charged with rape may be prejudiced if his name is disclosed and if he is subsequently acquitted, but, then, what about a man who is charged with burglary or murder?

Senator Flynn: It applies in all cases.

The Chairman: Can you make an exception? A man charged with murder who is acquitted, but whose name has been disclosed, will also be prejudiced.

Senator Flynn: I would say even more so.

Senator Neiman: It is a good point, and I realize there is quite a difficulty in making an exception.

Senator Flynn: Unless you were to make a general rule giving this power. I think Mr. Christie said that the power does not exist generally, but if it did, then it would cover the point. However, by inserting it here you could cover that point. At the same time I don't think it would be completely logical.

Senator Neiman: I accept that.

Senator Godfrey: So do I.

The Chairman: Shall clause 44 carry?

Hon. Senators: Carried.

The Chairman: We also deferred clauses 45 and 46 on bail pre-trial release. Have you looked at that, Mr. Sommerfeld?

Mr. S. F. Sommerfeld, Q.C., Director, Criminal Law Section, Department of Justice: Clause 45 is the amendment to section 453.3(4) under which the accused is to be required to sign his appearance notice. The reason for the amendment was to try to ensure that someone other than the accused could not show up for fingerprinting. I have determined what I understand to be police procedure in this regard, and it is that when the accused comes in for fingerprinting—and at the present time he has to sign the promise to appear—then he has to sign again and they compare the signatures. This is the check they make on it. There is no particular point in the duplicate.

The Chairman: Does that explain the matter? Senator Flynn, you were not here, but we discussed these yesterday and we left these questions open. Does clause 45 carry?

Hon. Senators: Carried.

The Chairman: Clause 46.

Mr. Sommerfeld: Clause 46 is an amendment to section 454 of the Code. Perhaps I can best explain it this way: section 454(1) provides that a person who is arrested must be brought before a justice unless, before the time periods that are set out expire, he is released under any other provision of Part XIV, such as, for example, section 453, "released from custody by officer in charge," or where, as is now provided in section 454(1) (d), the peace officer or officer in charge is satisfied that the person should be released from custody unconditionally.

In circumstances where the release is not obligatory under section 453, for example, where the offence carries a penalty of more than five years—the peace officer or officer in charge might nonetheless be prepared to release the

person, but as section 454(1)(d) now stands, he can do so only unconditionally; that is, he cannot do so on recognition or promise to appear. The result may be that he is a little reluctant to release him, and if he does so he still has to issue a summons and have him served before he has anything to compel him to appear again.

So the purpose of this amendment is to enable the peace officer or the officer in charge, in those circumstances, to release the person who has been arrested and, as is provided under subsection (1.1), to release him in accordance with paragraphs 453(1)(f) to (h), the paragraphs which have to do with release on promise to appear or recognition. There is an exception, of course, in the case of serious crimes like murder and hijacking.

The Chairman: Does this clarify the questions that were asked yesterday? Does clause 46 carry?

Hon. Senators: Carried.

Mr. Sommerfeld: Mr. Chairman, there was one other thing that we were asked to provide. There was clause 9, and also the names of the parties to the UN convention.

The Chairman: That was requested by Senator Langlois. He wanted to know who the signatories were to the convention which led to the amendment affecting international persons...

Mr. Sommerfeld: I am prepared to provide those, Mr. Chairman.

The Chairman: If you will leave them with the clerk of the committee, that will be satisfactory. I recall that Senator Langlois raised the question about the French translation of clause 9. I must admit that I am not satisfied with clause 9, which we have approved and which we discussed at length yesterday. The committee approved it.

Senator Smith (Colchester): On division, I take it?

The Chairman: On division, yes. Senator Langlois' point was that the translation of the words "whether ascertained or not" by "même indéterminée" is not correct; that "même indéterminée" goes further than "whether ascertained or not."

Senator Flynn: In the English context it means, as I understand it, "identified or not." It would be "même non identifiée."

Senator Godfrey: That word bothers me also.

The Chairman: That is why I said that while the committee approved it, it gives a dangerous leeway to the policeman.

Senator Flynn: Would you say that "ascertained" means "identified" here? I am trying to find out the exact meaning of the English word "ascertained."

Senator Robichaud: Can anyone define exactly what the word "ascertained" means? I am not satisfied with the translation either.

Mr. L. R. du Plessis, Acting Law Clerk and Parliamentary Counsel: I think it means whether known or not known. It is more related to the word "known" than to the word "identified." The word "identified" would be a more precise term.

Senator Flynn: I am not so sure. I think they have in mind the idea of "identified."

Mr. du Plessis: But that word has not been used . . .

Senator Flynn: I know it has not been used. If you say "whether known or not," it is not clear.

Senator Laird: Is it not closer to say "to find out"?

Mr. du Plessis: It could be noted that the amendment does not refer to the accused; it refers to the disturbance that has been caused. We should consider the meaning of the word "ascertained" in the context of the clause and determine whether it has to be in any more precise terms. The new subclause (2), as I see it, relates only to the kind of evidence that a court may consider when deciding whether or not a disturbance took place. It does not refer to the accused. It deals only with the conduct of a small or large gathering of people, known or unknown, as revealed by the evidence of the peace officer. The clause simply says that it is not necessary that the people who participated in the gathering be identified.

Senator Flynn: The word "identified" may not mean the same thing so far as the accused is concerned, for the purpose of finding him guilty. If you say, "I saw some persons disturbing the peace," you do not have to say whether that person was so-and-so. That is identification.

Mr. du Plessis: That is not required for the purposes of establishing that a disturbance took place.

Mr. Christie: If you have a mob of 100 or 120 people swirling around, throwing clubs, jeering at the police, and doing all the things that go on—they do go on and, unfortunately, they go on too frequently—you may be able, as I pointed out yesterday, to call only half a dozen of them, get them into the police car and have them charged. The police will have to explain the conduct of unascertained persons so that the court will have a picture of what was going on in relation to a charge under section 171.

Senator Flynn: I think it is "individually identified" that you have in mind.

Senator Godfrey: I must confess, I am getting more and more doubtful about the inclusion of that. If we look at 171(a), it refers to the conduct of only one person. He himself has to fight, scream, shout, swear or be drunk. He has to be the person who impedes or molests other persons.

Mr. Christie: With all due respect, senator, the Interpretation Act provides expressly that the singular includes the plural.

Senator Godfrey: But you are accusing one person. You are saying, "You did this, that or the other thing." Therefore you have to identify that that person has fought, and so on. What other person do you have to ascertain?

Senator Flynn: Isn't the purpose to say that the accused was, among other persons, doing this generally? If you put the question to the police, "Who were those other persons?" the police say, "I don't know, but I saw them." I think that is what they are trying to correct—to say that such evidence is acceptable.

Senator Smith (Colchester): Since we are apparently reverting to the discussion of yesterday, it seems to me that all we are trying to do is to provide that it would be easier to prove that a disturbance occurred, which has nothing to do with the identity of any particular person, the accused or otherwise. The question that bothers me is

why it is necessary. After all, all you have to do to prove a disturbance is to show that there was noise in a public place, or any other place relevant to the section. It seems to me that this is either unnecessary or else is going further than the law ought to go. If the fellow cannot prove a disturbance occurred—which is what this is about—by the ordinary evidence, I do not care if you have a mob of ten thousand.

Senator Laird: Then you might have some lawyer acting for the accused saying, "Look how indefinite all this is. If this fellow cannot say with some degree of certainty who was in the act, how can you take his word for it that there was a disturbance?" The more I think of it, the more I think it is objectionable.

Senator Smith (Colchester): If they cannot prove the noise, supposing it is noise, by direct evidence, then I do not see why you should allow it to be proved by some less satisfactory kind of evidence.

Senator Flynn: Maybe the amendment is based on bad judgment.

The Chairman: It is. I just wanted to ask Senator Smith one question. Do you agree with Mr. du Plessis' interpretation, that the clause "whether ascertained or not" relates to the conduct?

Senator Flynn: No, the persons.

Senator Smith (Colchester): The conduct of a person or persons.

The Chairman: That is what I thought, because the French translation definitely relates to the person; "indeterminée" is feminine related to "la personne." It relates to the person.

Senator Godfrey: In a way we are re-arguing what we went over yesterday.

The Chairman: I think it is important to do so.

Senator Godfrey: My understanding is that if you could not prove a disturbance they would not accept the evidence of a police officer. All they are saying is whether, apart from "ascertain or not"—and this is what is worrying me and what is confusing and is the essential point—you can accept the evidence of a police officer.

Senator Flynn: Let us find out what the judgment was.

Senator Smith (Colchester): If the policeman was not giving evidence that was credible and satisfactory to the court it ought not to be accepted.

Senator Godfrey: I agree with that.

Senator Smith (Colchester): There is no great mystery in proving a disturbance occurred if the policeman was there and saw the disturbance.

Senator Godfrey: Can we have read again what was read yesterday?

Senator Flynn: The judgment.

Mr. Christie: The problem is that they do not accept the evidence . . .

Senator Flynn: Who do not?

Mr. Christie: The courts in Vancouver.

Senator Flynn: The first court or the court of appeal?

Mr. Christie: Let me repeat this from my brief notes. In June, 1972, the city prosecutor for Vancouver complained to the department that over the years his office had experienced difficulty in obtaining convictions under paragraphs (a) and (d) of this section, section 171, of the Criminal Code, because the courts were consistently refusing to find on the evidence of police witnesses alone that there was a disturbance within the meaning of those paragraphs. They were insisting, so the complaint went, that members of the public should be called to prove the case. However, for obvious reasons it was difficult for the Crown to do so. To come back to Senator Godfrey's point for a moment, the idea of convicting a person on the evidence of a police officer alone happens every day, hundreds of times a day, in this country.

Senator Godfrey: That is all we are saying in this section; you can convict on the evidence of the police officer.

Senator Smith (Colchester): They said you could not.

Senator Godfrey: They did. He just read it out.

Senator Flynn: No.

Senator Smith (Colchester): I think it means that some court—and I would very much like to know what court and on what facts—said, "I am not going to find there was a disturbance here unless some member of the public comes and swears that he personally was disturbed."

Senator Flynn: He could say that possibly even with the amendment.

Senator Croll: It was not only said, but consistently said.

Senator Smith (Colchester): We don't know what has been said. After all, I do not impugn the veracity or seriousness of anybody. However, crown prosecutors do get ideas that arise out of their experiences but which do not stand the test of real examination in light of the general principles of law. I would just like to be sure that this experience has not arisen in that way.

Senator Flynn: I am not too sure that the amendment as drafted would correct it, because they say:

A summary conviction court may infer from the evidence of a police officer... that a disturbance... occurred.

They just say "may infer." If you want to be correct you should perhaps say, "should," but that would go too far, as Senator Smith suggests.

Senator Neiman: I suggest that we defer further consideration of this clause for the moment, bearing in mind what we have been told, that this goes back to June, 1972, which means almost four years have elapsed, and probably some more judgments have been made on this section of the Criminal Code. I would like to know if that type of judgment has been overturned by some superior court just on the facts. I would like to know a little bit more on that. I too am disturbed about certain aspects of it. I am not convinced that this purported amendment does what it would like to do. Paragraph (a) of subsection (2) refers to a disturbance caused by being drunk. A person may be convicted of being drunk under the definition of that section, and under this amendment. I just do not see its application in a sense, and I would prefer that we defer this until we get more background facts on it.

Senator Lang: I am beginning to dislike this amendment, on principle.

The Chairman: That is what I said at the outset, although we approved it yesterday.

Senator Lang: The implications of this are quite serious. I can see very well why a court would not want to convict, on the uncorroborated evidence of a police officer, a man charged with causing a disturbance. It is very easy to arrest a man and just say he was causing a disturbance because the police officer saw an old lady down the street wince, or something like that. I am afraid of the extension of police powers that this implies.

Senator Godfrey: I must confess that those words "whether ascertained or not" sort of muddy the water a bit for me. My present inclination would be to delete them as being unnecessary and as confusing the issue, and simply say that the court may, if it so wishes, convict.

Senator Flynn: This is a rule of interpretation. It does not belong there at all.

Senator Godfrey: It can.

Senator Flynn: It does not belong there. Since when has the court been forced to disregard the evidence of a police officer? You say to a court that it may accept it. But this is a rule of interpretation; it should not be found in the description of a crime.

Senator Godfrey: It should not be necessary; I agree there.

Senator Laird: You are saying it is there *ex abundante cautela*.

Senator Godfrey: To me it is ridiculous that it should be necessary. Surely the ordinary law would permit you to do it, but evidently they do not.

Senator Smith: I am not convinced that you are right to say that they do not.

Senator Flynn: The court of appeal could have overruled that at any time.

The Chairman: Senator Neiman raised a good point as to whether this ruling has possibly been overruled since. Would not the Department of Justice have checked that, Mr. Christie? You quoted the case on which you base yourself for proposing this amendment. Senator Neiman has pointed out that it was a 1972 case.

Senator Neiman: It was before then, obviously. That is when the submission was made to them.

The Chairman: Senator Neiman says that it may well have been overruled several times by courts of appeal. Would not the Department of Justice have checked into that?

Mr. Christie: I would have to check that.

The Chairman: My suggestion, if the committee agrees, is to defer consideration of clause 9 and request the Department of Justice to check on whether there have been decisions since then.

Senator Langlois: Not only in Vancouver but elsewhere in Canada.

Senator Godfrey: Is there only one kooky judge that we are overruling who is situated in Vancouver?

The Chairman: Or are there only disturbances in Vancouver?

Mr. Sommerfeld: Mr. Chairman, I can indicate what the facts of the case are. I have the judgment before me. It was a judgment of the Honourable Mr. Justice Wootton, of the Supreme Court of British Columbia, on an appeal by way of a stated case. It was an appeal from a conviction by a provincial judge.

Senator Godfrey: Perhaps copies of that judgment could be distributed to the members of the committee.

Mr. Sommerfeld: I can simply read from the facts as stated in the stated case. Mr. Justice Wootton said:

The real issue is as to whether or not it was established that a disturbance was caused. It is inherent in the conviction of the accused that the learned Provincial Court Judge did determine that a disturbance had been caused; otherwise there could have been no conviction. He found as fact:

"(a) that on the 23rd day of June, A.D. 1972, members of the Vancouver City Police force attended in the 7500 Block Fraser Street, in the City of Vancouver, in the Province of British Columbia, and at that time the attention of two of the said officers, Corporal Colvin Reynolds and Stanley George Joplin, were drawn to the accused, Irene Eyre;

(b) that before the premises at 7514 Fraser Street, in the City of Vancouver, Province of British Columbia, there had been a large party of young people going on at that address and several of the young people were assembled on the front lawn of the said address;

(c) that there were approximately fifty (50) young people at the party at 7514 Fraser Street, Vancouver, B.C., and several police officers in attendance."

Those findings of fact are not a finding that a disturbance had been caused. The next facts found by the Magistrate were:

"(d) that Corporal Colvin Reynolds saw the accused with approximately five (5) other people and advised her to leave the area and informed her that if she did not leave she would be charged. This was said approximately three (3) times but the accused stayed in the vicinity and said to Corporal Reynolds, ...

I do not think it is appropriate to repeat the words that were used at that time now, if I may be excused from doing so.

Senator Flynn: Maybe it was "fuddle-duddle."

Mr. Sommerfeld: Just continuing:

(e) that the attention of Corporal Reynolds was drawn away from the accused person for approximately five (5) minutes as another party was being arrested by other police officers;

(f) that Corporal Reynolds saw the accused go to the other side of the street and next saw her being assisted into the police wagon by Constable Stanley George Joplin;

(g) that Corporal Reynolds found that her words were shouted loudly and that there were eight (8) citizens standing on the north west corner of Fraser

and 59th Street, people were looking out of their windows and on a house immediately to the south of the place in question there was a woman standing on her front porch and in the 7400 Block of Fraser Street there were people standing on their balconies."

On those facts all that has been established is that the appellant said to Corporal Reynolds the words indicated above.

... If we swore that her words were shouted loudly and that there were eight citizens standing on the northwest corner of Fraser and 59th Street, it was for the learned Provincial Court Judge to determine if indeed those facts were established and that a disturbance was thus created. All that was established is that the appellant spoke abusive words to Corporal Reynolds.

Senator Flynn: Surely, that does not justify an amendment to the Criminal Code? In my opinion, we should defer consideration of this matter and possibly consider deleting the clause altogether.

Senator Smith (Colchester): I think so, too.

Senator Langlois: Was that the end of the stated case?

Senator Flynn: The decision was that it was a question of fact.

Senator Smith: All he is saying is that the Crown did not prove its case.

Senator Langlois: That is it exactly.

Senator Smith: The court did not find that the elements of the disturbance occurred and that means the Crown was sloppy in presenting its case, if it had a case.

Senator Flynn: He did not connect it with the accused, and this amendment would not correct that situation at all.

Mr. du Plessis: No, because it only says that the court may infer.

Senator Flynn: That is right. It would not have changed the judgment at all.

Senator Croll: The other court could have inferred, but it did not.

Senator Flynn: That is right. The judge did not infer, and this amendment only gives him the same leeway.

Senator Neiman: There may very well be other cases which would have occurred under this section since then. I think it would be worthwhile deferring it for further consideration.

Senator Flynn: It is certainly not a good idea to try to legislate on the basis of one case, in any event.

Senator Smith (Colchester): Obviously that case was poorly presented.

Senator Flynn: Certainly on the basis of the stated case I would have decided the same way.

The Chairman: Does the committee wish to defer consideration of that, then? Although the clause was approved yesterday, we can defer it for renewed consideration. Is that agreed?

Hon. Senators: Agreed.

The Chairman: We come now to "Drinking and Driving Offences," and the use of the breathalyzer, which are clauses 14, 15, 16, 17, 18, 20, 72, 85 and 102.

Senator Flynn: Senator Asselin has taken a special interest in those clauses, Mr. Chairman. He is not able to be here this afternoon owing to official business which he is on. As it does not appear that we will be able to finish today, in any event, perhaps we could defer that until later.

The Chairman: Will he be here tomorrow?

Senator Flynn: No, he will not.

The Chairman: Well, we are meeting tomorrow morning but we have a whole series of matters to deal with and, if the committee agrees, we will defer the clauses until our meeting next week.

Hon. Senators: Agreed.

The Chairman: The next matter is "Proof of Status of Driver and Driving While Disqualified or Prohibited" Do you think that should also be deferred with the drinking offences?

Hon. Senators: Agreed.

The Chairman: We will defer clauses 19 and 101 as well, then.

Senator Croll: Mr. Chairman, I have to leave this meeting shortly and unfortunately I will not be here tomorrow. If you come to the matter of bail reform tomorrow, which I am quite interested in, could you also defer that until next week?

The Chairman: We plan to meet next Tuesday, so we will do that. There are a few matters that we can consider quickly now, however. Section 21, "Begging while Armed". Mr. Christie?

Mr. Christie: Again. Mr. Chairman, this is a proposed amendment which emanates from Vancouver. Very briefly, the facts as related to us are that it has become quite a common practice in certain streets in Vancouver for young people to beg, but while doing so they would be dressed in such a way as to carry an exposed scout knife or some other weapon, and the suggestion, of course, was that it was not begging in the real sense of asking for alms; there was a threat or an implied threat that if the money were not handed over, then the weapon might be resorted to. The problem which gave rise to the amendment was stated by Mr. Stewart McMorran, City Prosecutor for the City of Vancouver, in a letter dated June 28, 1973, to the Honourable George Whittaker, M.P. (Okanagan Boundary), as follows:

What has been occurring on the streets in Vancouver is that many young people have been carrying knives of various sizes and descriptions in their belts or in sheaths attached to their belts mostly on the outside of their clothing, that is not concealed. There is, regardless of legal interpretation, no offence under section 85 in these simple facts. These people accost citizens on the street to beg and by their intimidating attitude actually frighten people into believing that the knives might well be used. Unless it can be shown under section 83 that the knife was in fact in possession for the express purpose of intimidating the citizen, that is for a purpose dangerous to the public peace or for the purpose of committing an offence and that the accused

had formed an intention to possess the weapon for that purpose, the charge cannot be made out, and unless the latter can be proved a real problem to the charge of concealed weapon under section 85 will occur. The Commissions for Ontario, Alberta and Quebec also reported to the conference—the Uniformity Conference—that the problem existed in Metropolitan Centres in their provinces.

That is the basis for the proposed amendment

Senator Neiman: Mr. Chairman, I am looking at section 85, which deals with carrying a concealed weapon, and this section says that "everyone who carries a concealed weapon... may be guilty of an offence," so it seems to me that the problem is within section 85 itself.

Mr. Christie: But in this case the weapon is not concealed.

Senator Neiman: That is exactly the point. Why does section 85 not say that everybody who carries a weapon, or anything else that may be dangerous? What is the difference if I carry a gun that is visible. If I carry it outside, I am all right, I gather, but if I stick it in my pocket, then I am committing an offence.

Senator Robichaud: I think there is a big difference. I think we have all probably been accosted by people on the streets who are begging. I made it a practice never to give a penny or a nickel, but if I were alone on the street and somebody showed me a knife or a gun, I might be tempted to give him a quarter or perhaps even a dollar. Personally I think this is a very worthwhile section.

Senator Croll: But the point Senator Neiman is making is about a "concealed" weapon. If you took out the word "concealed", then you would cover both situations.

Mr. Christie: No. The rationale for the offence of carrying a concealed weapon may be entirely different. I could be carrying a concealed weapon for the purpose of being able to get close to you, senator, without your realizing that I am armed, and my purpose may be to assault or to threaten you. That then may be the purpose of concealing the weapon. In this case the purpose is to keep it unconcealed so that somebody will know I have it. Then if I ask for money, there may be an implied threat.

Senator Neiman: Yes, I understand the point you are making that it may be exposed as a threat or intimidation, but it seems to me that if one of these persons came up to me on the street with, for instance, one of these knives and made threatening gestures and asked me, say, for my hat, and I just thought he was kidding or if I began to worry about it, then it goes beyond the sense of just begging for money. I think you can intimidate people and frighten them in many different ways, other than simply by asking them for money. They say here, "accosts or impedes another person and begs", but the fact of the matter is that they can threaten you in many, many ways other than by saying, "I want a quarter!"

Senator Godfrey: Well, suppose somebody swaggers down Yonge Street openly carrying a knife, so what?—that is, as long as he does not bother anyone. But if he comes along and starts begging, then you start to worry. It is the begging that makes you worry, and that constitutes the offence. If he simply wants to act like a big shot and does not approach you and keeps to himself, well then, as I said, so what?

Senator Langlois: But, Mr. Chairman, why limit it to begging? It can be used for threatening in many different ways.

Mr. Christie: As Senator Neiman points out, there are many different ways of intimidating people, but this is to deal with a particular class of intimidation that has grown up in certain larger metropolitan areas.

Senator Flynn: There is no other provision in the Criminal Code for threatening someone?

Mr. Christie: Yes, but not for this particular type of thing.

Senator Flynn: Are you sure? You think it is not covered?

Senator Laird: Well, without this section, I would like to depend on that other general section; I think I might very well get an acquittal. But this fills a void, in my humble opinion, since this is a practice that has recently grown up.

Senator Flynn: What does the general section say?

Senator Croll: You see what you have here is some of these guys who are on dope or drugs, and that is the situation that this is intended to cover.

Senator Flynn: I agree with that.

Mr. Sommerfeld: Well, senator, section 305 is the extortion section.

Mr. Christie: You see a person could come up to you on East Hastings St. in Vancouver and he could be wearing a scout knife, and ask you for a dollar or 50 cents. You may refuse him or you may give it to him because you are intimidated; but if you give it to him because you are intimidated...

Senator Flynn: It seems that if someone comes to you with a knife or a gun and says, "Give me a dollar," he certainly comes under section 305.

Mr. Christie: But that is not what they do. They do not say "Give me a dollar". They say, "Have you got a dollar for a cup of coffee or 50 cents for a glass of beer?", or something like that.

Senator Flynn: But that gesture would be sufficient, in my thinking,...

Mr. Christie: They do not seem to be able to make it stick.

Senator Langlois: Perhaps section 305 could be read.

The Chairman: I have here an explanation given by the Minister of Justice when the bill was presented to the House of Commons. It is brief, so I shall read it:

Begging while armed, (clause 21).

In 1972 the offence of begging was abolished and the scope of the offence of vagrancy was considerably reduced. It was hoped that municipal regulations could deal with any practical problems that arose. However, when someone who is begging leads the person he accosts to believe force may be applied, the conduct should be prohibited by criminal law rather than by municipal by-law. This objective is achieved by amending the definition of assault to include anyone who "while openly wearing or carrying a weapon or

imitation thereof accosts or impedes another person and begs".

That was the explanation given by the minister. It seems to me to be a reasonable requirement. I must say that I happen to go to university campuses every now and again, and I have been met by fellows who apparently have had some drugs. They stop me for a quarter or a dollar, and they scare me. I have seen some of them put their hands in their pockets. I think that is what this is intended to deal with.

Senator Flynn: Mr. Chairman, you would have to add to the amendment something like "putting his hand in his pocket", or suggest that the person was armed, if you want to cover you particular case. That could be another amendment next year to be called "the Goldenberg amendment".

The Chairman: Does clause 21 carry?

Hon. Senators: Carried.

The Chairman: Clause 22, "Assault Causing Bodily Harm".

Mr. Christie: Mr. Chairman, under the existing law, the offence of assault causing bodily harm is an offence punishable on indictment only and carries a maximum of five years' imprisonment. Experience has shown in recent years that there are cases of persons committing assault that caused bodily harm. The breaking of the skin or the nose can constitute bodily harm. It has been suggested that the Crown should be given an option, depending on the seriousness of the attack, to proceed by way of summary conviction in appropriate cases.

Senator Laird: There is another section, I imagine, dealing with penalties on summary conviction to which you could turn.

Mr. Christie: There is a general provision. It is \$500, or six months, or both.

The Chairman: Does clause 22 carry?

Hon. Senators: Carried.

The Chairman: The next one does not sound controversial, "definition—'Minister of Health' respecting Alberta". Does clause 22.1 carry?

Hon. Senators: Carried.

The Chairman: The next one is "Toll Fraud (Telecommunications)" clauses 23 and 24.

Mr. Sommerfeld: Mr. Chairman, these clauses have to do with the development of electronic devices which I am told are put together fairly cheaply and effectively by someone with some electronic knowledge, the effect of which is to enable the user of them to shortcircuit the computer accounting system in long distance telephone calls and make and receive telephone calls without their being charged or paid for.

The devices go by the name of blue boxes and black boxes. I must confess that I know very little about the technical aspects of it. A blue box, I am told, is an electronic device designed to be used at the originating end of the call, and it circumvents the automatic accounting equipment. The black box is a device designed to be used at the receiving end of a long distance call and prevents billing to the originating party.

They are simply fraudulent devices. There have been complaints about their use from the Canadian telecommunications carriers association among others. The object of the amendment in clause 24 is to make it an offence to be in possession of it or to manufacture or sell or offer for sale these kinds of devices.

Clause 23 is an amendment to section 287 (1) of the Criminal Code which at present provides that:

"Every one commits theft who fraudulently, maliciously, or without colour of right, ... uses any telecommunication wire or cable or obtains any telecommunication service.

Recent developments in telecommunications—for example, the radio telephone service; I understand that most overseas telephone calls, for example, actually go by radio—has made this reference to wire and cable somewhat obsolete, and the amendment in clause 23 is designed to reflect that. It will now read:

Anyone commits a theft who fraudulently, maliciously, or without colour of right, uses any telecommunication facility or obtains any telecommunication service.

The Chairman: The change is really necessary, from what you say, because of technological developments.

Mr. Sommerfeld: Yes, Mr. Chairman.

The Chairman: Do clauses 23 and 24 carry?

Hon. Senators: Carried.

The Chairman: The next one is "Theft, etc., under \$200.00," clauses 25, 30, 31, 32, and 62(a) and (b).

Senator Flynn: Mr. Chairman, I think it is simply because of inflation.

Mr. Christie: No comment.

Senator Flynn: If that is the only reason, we will carry them right away.

Senator Langlois: Under the guidelines, in other words.

Senator Flynn: Do we come under the guidelines?

The Chairman: Are you suggesting that the jurisdiction be removed from the court and transferred to the Anti-Inflation Board?

Senator Flynn: The amount should be left to be determined by the Anti-Inflation Board.

The Chairman: Do you want to explain it, Mr. Christie?

Mr. Christie: We are dealing with clauses 25, 30 and following.

At present the offence of theft, possession of property obtained by crime, false pretences and fraud are indictable offences, regardless of the value of the property that is the subject matter of the offence. At the 1972 annual meeting of the Canadian Bar Association the following resolution was adopted, without reading the preamble:

Resolved, that the Minister of Justice be requested to make the appropriate changes in the Criminal Code to provide that theft, fraud or obtaining by false pretences in a value amount not exceeding \$200 be made both a summary conviction and an indictable offence.

That, of course, will allow the Crown in an appropriate case to proceed by way of summary conviction instead of by way of indictment, with all the consequences that flow from proceeding by way of indictment.

I might add that in a letter dated April 2, 1973, Professor Schmeiser, acting upon instructions of the Saskatchewan Association on Human Rights, suggested that the provision with respect to the offence of theft was too harsh because, for example, it rendered a young person who stole a chocolate bar liable to prosecution for an indictable offence. He suggested that the offence of theft should be one that should be tried either by summary conviction procedure or by way of indictment at the option of the prosecutor. That, of course, is the substance of what is before you.

Senator Flynn: What was the figure in place of \$25 before? I think under \$25 you could proceed by summary conviction or by way of indictable offence.

Mr. Christie: No. No matter what the amount, theft has always been an indictable offence, although triable, if it was, I believe, under \$50 at one stage, summarily by a magistrate. In other words, even though you were charged with an indictable offence you did not have an option to elect to be tried by a higher court.

Senator Godfrey: I think it was \$40 when I went to law school.

Senator Flynn: The question of the amount was raised in the Senate on a bill sponsored by Senator John M. Macdonald a couple of years ago.

Mr. Christie: It was \$50 before.

Senator Flynn: That was followed by an amendment suggested by the Minister of Justice, but this problem has already been dealt with in the Senate. I just wanted to put that on the record. We agree that nowadays \$200 is not much.

The Chairman: Peanuts!

Senator Flynn: Peanuts. The "millions" of C. D. Howe were peanuts.

Senator Godfrey: In what year was the \$200 figure established?

Mr. Christie: It went from \$50 to \$200 quite recently; I think in 1972. That is how recent it is.

Senator Flynn: That was a suggestion made by Senator Macdonald.

Senator Godfrey: Why leave it at \$200? What has been the rate of inflation since 1972?

Senator Flynn: Are we going to index the amount?

Senator Godfrey: If it was \$200 in 1972, it should be at least \$250 now.

Senator Flynn: In any event, I think it is a good amendment.

The Chairman: I believe that covers clauses 25, 30, 31 and 32, does it?

Senator Flynn: And 62A and B.

The Chairman: Does it cover 62A and B?

Mr. Christie: Yes.

The Chairman: Shall those clauses carry?

Hon. Senators: Carried.

The Chairman: The next item is "Cattle Theft," clause 26.

Mr. Christie: The purpose of this clause is to make it a specific offence to steal cattle, in other words cattle rustling. Representatives of the cattle industry have made statements over the years in which they have indicated that the incidence of cattle rustling was high, and that the sentences imposed by the courts in some cases upon persons convicted of the offence were not calculated to deter either the offender or other persons from committing the offence. The matter was considered in May, 1973, at a meeting of attorneys-general, but there was no consensus on a solution. One province suggested that the offence should carry a minimum penalty; other provinces suggested that the Criminal Code should be amended to make cattle theft a separate offence. In the result, the proposal is that cattle theft be made a separate offence, carrying a maximum term of imprisonment of ten years.

The Chairman: Senator Neiman, are you going to ask whether this is related to the current price of beef?

Senator Neiman: I think perhaps I should. I question this, as I am going to question the next amendment on this, on the type of punishment being meted out. I know that to a westerner the theft of some cattle is a very serious crime. However, it seems to me that perhaps the theft of one cow, which may be worth—I don't know what it is now...

Senator Robichaud: Four Hundred dollars.

Senator Neiman: It should not be an indictable offence, or at least there should be some alternative type of punishment on summary conviction, and there should be a range. I think this is simply too tough. Certainly for easterners it is; it may not be for westerners. I object to this. I think that is a very stiff type of penalty.

Senator Flynn: What is the present penalty?

Senator Neiman: The penalties are usually equated in some way to the value of the property stolen. I gather there was some difference of opinion, from what you said, Mr. Christie.

Mr. Christie: If the cow was worth over \$200, the penalty could be ten years.

Senator Neiman: I guess that is right.

Mr. Christie: The western cattlemen want to bring home the fact that the theft of cattle is a current and, as far as they are concerned, an important matter; they want that brought home. They also want brought home, in conjunction with that, that it carries a maximum of ten years imprisonment.

Senator Flynn: Carried home to whom? To the judge? You mean, carried home to the judge?

Mr. Christie: No, I think carried home to the public.

Senator Neiman: I know it is happening in Ontario.

Senator Flynn: What would be the difference in the charge under this amendment? If you charge a man with the theft of cattle now you are going to say he has stolen cattle, and the provisions of the law will say that if it is worth more than \$200 it is punishable by a maximum of ten

years' imprisonment. If you single out cattle, I do not see what difference it will make.

Senator Godfrey: Suppose you steal a calf, which may be worth only \$100?

Mr. Christie: That is one of the results that will happen. I am told that most of the cattle rustled are worth more than \$200. How factual that is I do not know.

Senator Flynn: All the more reason for not making an amendment for cattle. If I am the victim of a special type of theft, I will go to the Department of Justice and ask, "Will you please identify the type of theft?" because I think it will help. It seems to me a rather naïve approach to legislating.

Senator Neiman: I agree. I know this has been pressed on the government for a long time, particularly by western members. I know that also it is becoming a problem in some parts of Ontario.

Senator Flynn: That may be the situation.

Senator Neiman: I agree, but I accept Mr. Christie's explanation. I just want to emphasize that this is what they consider.

Senator Lang: I presume the stiffness of the penalty is related to the ease with which cattle can be stolen.

Senator Neiman: And converted.

Senator Godfrey: I see that "cattle" includes pigs, sheep and goats. I imagine one pig is worth less than \$200.

Mr. Christie: I do not believe they are thinking about pigs.

Senator Godfrey: No, I do not think they are.

Senator Flynn: I certainly object to that approach.

Senator Godfrey: I do not see anything wrong with emphasizing it.

Senator Flynn: Suppose tomorrow somebody steals your watch, you are going to say something special about watches, and about everything under the sun. Just imagine!

Senator Robichaud: This provision has been incorporated not only for western farmers but for Ontario farmers. I know that a couple of years ago in one section of New Brunswick there were professional cattle thieves. It is so easy to steal cattle. People were afraid, because they were losing their cattle right and left in a certain section of New Brunswick. So I do not see anything wrong with a maximum of ten years for these professionals. Obviously, a judge may not wish to sentence a young person who steals a calf to ten years' imprisonment.

Senator Flynn: You did not get my point. My point is that it is already in the law.

Senator Robichaud: You mean in another section referring to any type of theft?

Senator Flynn: Yes. Identifying the nature of the stolen objects is silly, in my opinion. The charge will be exactly the same under this new provision as it is presently. The penalty is the same as well.

Senator Laird: All you can say, really, is that it must be for psychological effect, but in principle I agree with Senator Flynn.

Senator Godfrey: They are agitating for it out West, and it is not going to do any harm.

Senator Flynn: If every time someone agitates for his own cause you end up making a law to reflect every little problem, just for psychological effect, you can just imagine the result! It is bad practice.

Senator Laird: Yes, I have to agree that it is dangerous.

The Chairman: Mr. Christie, do you wish to say anything on the subclause having to do with presumption from possession of cattle?

Mr. Christie: That simply carries forward what now exists under subsection (3) in respect to false branding and so on. There is a presumption that will carry forward in relation to the theft.

Senator Flynn: In other words, you identify again the problem with regard to cattle only.

Mr. Christie: Cattle only, yes.

Senator Godfrey: There is a point in principle that I cannot agree with. We went through all this in the marihuana matter, but we can go through it again if you wish. I think the accused should only have to raise a reasonable doubt rather than have to prove that it came into his possession. I think the onus should shift all right on these possession matters, but I feel that the accused should be acquitted if he can raise a reasonable doubt. Here he has the burden of proving that the cattle came lawfully into his possession.

Mr. Christie: With all respect, senator, I am not sure that he has to prove that. If he can raise a reasonable doubt, I think he is home free. There may be a shifting of the burden, but even when the burden is shifted, if in relation to the shifted burden you can raise a reasonable doubt, you are still home free. The reasonable doubt, as I understand the law, sweeps right across from A to Z, even though you may have burden-shifting provisions in between.

Senator Flynn: In any event, it is already in the act.

Senator Godfrey: I know that, but, having come up against this before, I want to make absolutely sure that that is the law. Is what Mr. Christie says absolutely correct? If so, I am satisfied.

The Chairman: This makes no change in the existing law, senator.

Senator Flynn: It is not new law, no. It is only because you are creating a new offence—or you think you are—and you are referring to paragraph 1. If we were to delete the clause, it would make no difference in fact so far as this is concerned. I move that the clause be deleted.

Senator Laird: I would not go that far, even though I agree with you in principle, Senator Flynn. I still think it must have been put in for psychological reasons.

Senator Flynn: I say that for psychological reasons the clause should be deleted—in order to warn the Department of Justice that this is not the way to legislate.

Senator Godfrey: Would it be possible for you to give me the authority or cite a case which will establish that what you have said is the law—namely, that the accused merely has to raise a reasonable doubt and does not have to prove

beyond a reasonable doubt, or as far as he would in a civil case?

Mr. Christie: I should say that there are also cases where there is a balance of probabilities.

Senator Godfrey: I know.

Mr. Christie: If you assume that either it is a balance of probabilities or is raising a reasonable doubt, is it your idea to scrub this whole section because there is nothing new in there?

Senator Godfrey: I do not want to scrub the clause. I am simply saying that while we are changing it, why not improve it even more.

Senator Flynn: We are not changing it at all.

The Chairman: Senator Godfrey, you are raising a point which is not applicable to theft of cattle alone. You are now raising an issue which applies to other sections of the Code, and I do not think we can solve that problem by dealing with it under this particular heading.

Senator Flynn: Senator Godfrey, my interpretation of this clause would be that if the accused says that he was not aware or had no knowledge that the cattle were under the control of an employee, and that he had no authority to keep the cattle, then if the judge believes him he will find him not guilty. If he does not believe him, that is something else again. If the accused adduces evidence that convinces the judge, then he will be acquitted.

Senator Godfrey: I suppose it would be contrary to the spirit of the thing. They are amending this for a specific purpose.

The Chairman: And Senator Flynn wants to abolish that specific purpose.

Senator Flynn: Yes, I want to move that clause 26 be deleted and the subsequent clauses be renumbered accordingly.

The Chairman: Senator Flynn has moved that clause 26 be deleted. All in favour? Those opposed? Clause 26 carries.

The next item is clause 27, "Credit Cards". I understand Senator Neiman is opposed to this clause.

Senator Neiman: Yes, Mr. Chairman, I am opposed to the clause as it now stands. I do not believe the simple act of stealing a credit card and not using it should be an indictable offence carrying such a high penalty. I realize there is pressure on us today to make this an offence, but I believe this particular clause goes entirely too far. I carry a wallet of credit cards around with me which I am quite likely to lose. If some youngster picks up my credit cards and is tempted into using one of them to the extent of \$5, that youngster could, under this clause, be liable to ten years' imprisonment. In my opinion, that is far too harsh. Perhaps there should be a summary conviction clause in there for the illegal possession of credit cards or the illegal use of them. In any event, I think the section should be amended substantially and, with your permission, I should like to have consideration of the clause deferred so that I can have a chance to offer you a redrafted clause. Perhaps at one of our meetings next week I would be in a position to offer you an amendment.

Senator Laird: Giving a choice between indictable and summary conviction offences?

Senator Neiman: Yes, depending on the extent of the offence.

Senator Flynn: I would also object to subparagraph (d)—“uses a credit card that he knows has been revoked or cancelled.” I think that if such a card belongs to me and I have not received my new card and I am on a trip and I use that old card, then I am not committing an offence at all.

Senator Langlois: I understand there was an amendment in the other place to this clause.

Senator Flynn: And in French it goes further.

The Chairman: “(d) utilise une carte de crédit qu’il sait annulée.”

Senator Flynn: “Annulée”, bien “annulée”, having expired; “expired” is not the same thing.

The Chairman: It is not the same thing.

Senator Langlois: There was an amendment to that point in the House of Commons. I think I have it here.

Senator Neiman: I am sorry, I was looking at the original bill where it used the word “expired”.

The Chairman: And in French it was originally “utilisé une carte de crédit qu’il sait expirée ou annulée”. They took out “expirée”.

Senator Langlois: “Expirée” est un autre sens.

The Chairman: It is not the same thing Originally it was “expirée”.

Senator Flynn: I suppose this has come as a result of submissions made by the people who issue these cards.

Senator Neiman: Exactly, I think that is where the pressure would come from, and they are the people who pressure us into taking the cards in the first place. I cannot say I have a great deal of sympathy with them.

The Chairman: Well, senator Neiman requests that we leave this over for consideration later. Is it agreed?

Hon. Senators: Agreed.

The Chairman: The next item is clause 28, “Protection of Currency Changing Machines”.

Mr. Christie: Perhaps the simplest thing I can do here is to read the problem as stated by the Canadian Automatic Merchandising Association. They state the problem in these terms, and I am quoting from what they said.

Senator Flynn: You are not adopting it?

Mr. Christie: I am quoting:

A relatively new addition to our industry is the dollar bill changer and the number of these is growing rapidly. They are placed on locations where coin-operated equipment is in operation for service to the consumers using that equipment. From time to time we find people who try to beat these machines. The Criminal Code, section 310, makes reference to “Coin Operated Devices”. Our interpretation is that a dollar bill changer which uses paper currency rather than coin could not be covered, and therefore someone could escape the law. We suggest that either an addition, “currency operated” be made or if the word “currency” could

cover both coin and paper money it could be substituted for the word “coin”.

As you know, at the moment it is an offence to break into coin-operated machines.

Senator Langlois: This request was also considered by the Conference of Commissioners on Uniformity of Legislation, was it not?

Mr. Christie: Yes. In August, 1974, they recommended that section 310 be amended accordingly. This amendment is an extension to a modern device. It is only in recent years that one can put a dollar bill into a machine and receive four quarters.

The Chairman: The only change is the addition of the term “or a currency exchange device”?

Mr. Christie: Yes.

Senator Robichaud: Would this include parking meters?

Mr. Christie: No.

Senator Flynn: The theft of moneys from a parking meter would come under the general law.

The Chairman: Shall clause 28 carry?

Hon. Senators: Carried.

The Chairman: Next, clause 29, “Laundering and Obliterating Serial Numbers.”

Mr. Sommerfeld: This amendment directs its attention to section 312 of the Criminal Code, subsection (1) of which now provides that it is an offence to knowingly possess in Canada anything that has been obtained by the commission of a crime. It is confined at the present time to the object that is actually obtained. The purpose of the amendment to section 312(1) is to extend that offence to being in possession of the proceeds of what was actually obtained or to the property in which it has been converted.

It is sometimes referred to as a laundering device to hide or dispose of the proceeds of an offence. The object of the amendment is to enable the law to follow the proceeds of what has been obtained by the commission of a crime beyond the actual property itself. Section 312(1) is directed towards that purpose.

The Chairman: Shall clause 29 carry?

Hon. Senators: Carried.

The Chairman: Next, clause 35, “Prohibited Possession of Animals”.

Mr. Christie: Mr. Chairman, the object of this amendment is to remove the present restriction that an order prohibiting the possession of animals or birds may be made only on a second or subsequent conviction for the offence of cruelty to animals. This amendment would permit the issue of such an order on conviction for a first offence where warranted.

As I have already indicated, an order can presently only be issued on a second subsequent offence. Section 402(5) of the Criminal Code provides that a court could prohibit, for a period not exceeding two years, the possession of animals or birds by a person who is convicted of a second or subsequent offence of cruelty to animals or birds. That provision was introduced into the law in 1969 upon the recommendation of the Ontario Humane Society.

Senator Langlois: Is a bird not considered an animal?

Mr. Christie: Experience has shown that there are cases of such obvious cruelty to animals by individuals that on first conviction it is seen that they are not fit persons to have animals in their possession on a future basis.

The Chairman: They are prohibited from having them for a period not exceeding two years?

Mr. Christie: Yes.

The Chairman: They can resume their cruelty after the expiry of two years?

Mr. Christie: That is correct.

Senator Langlois: Not with the same bird though.

Senator Robichaud: Following on from the question of Senator Langlois, I think the Society for the Prevention of Cruelty to Animals should be changed to "Animals and Birds."

The Chairman: Are you moving an amendment?

Senator Robichaud: I think they should change their name. I can't see the necessity of having "bird" there. I think a bird is an animal.

The Chairman: Does clause 35 carry?

Senator Flynn: With a smile.

Hon. Senators: Carried.

The Chairman: Clause 36, "Conspiracy". Would you explain this, Mr. Christie?

Senator Langlois: This is a little more serious.

Mr. Christie: I think all of us here will appreciate that incidents of international criminal activity are growing and that it was felt important that the law of conspiracy, under our law, be made perfectly clear.

The objects of the clause are, one, to make it an offence to conspire in Canada to commit an offence outside of Canada; and, two, to conspire outside of Canada to commit an offence in Canada. That would be an amendment, as I say, which would be consonant with what is unquestionably growing international crime, growing international conspiracies; conspiracies formed in Europe to bilk Canadians and, unfortunately, conspiracies formed in Canada to bilk foreigners. This will make the law clear.

Senator Flynn: There is presently no problem with respect to conspiracy in Canada.

Mr. Christie: You might have an argument. You see, the case law on conspiracy is very jumbled. I do not know if you ever tried to work your way through it, but I have and it really is an unfortunate experience.

Senator Flynn: At any rate, you think this will reinforce it?

Mr. Christie: I really do.

Senator Godfrey: If you conspire in Canada to commit a crime outside Canada, it must be a crime by Canadian law, not by the country outside?

Mr. Christie: Yes. You have to conspire in Canada, for example, to commit murder in England.

Senator Flynn: It probably would have to be a crime in both countries. Would you have the same principle as applies in cases of extradition, where you have to prove that it is a crime in both countries?

Senator Godfrey: Is that the case?

Mr. Summerfeld: Under this provision it would have to be an offence both in Canada and abroad, when the conspiracy is in Canada. The other way around, when the conspiracy is outside of Canada, it need only be an offence in Canada.

The Chairman: Does clause 36 carry?

Hon. senators: Carried.

The Chairman: The next one, "Mode of Trial of Attempted Murder", clause 37 and clause 38.

Mr. Christie: The purpose of this amendment is to allow a person charged with the offence of attempted murder to elect trial by a court composed of a magistrate without a jury, a judge without a jury, or a court composed of a judge and jury. In other words, it is a further deletion from that very shrinking list of cases which must be tried by a supreme court judge and jury. That list has been shrinking. In 1972 we eliminated from the list bribery of public officers, rape, attempted rape, manslaughter, and certain other serious offences. It is now, for all practical purposes, down to murder, treason, and two or three other offences; but murder is really the key one.

Senator Flynn: Is that because the accused or the league of criminals in Canada is losing confidence in the jury system?

Mr. Christie: For example, manslaughter carries a maximum of life imprisonment. There are a whole series of important crimes. For example, I have already mentioned rape. I could mention armed robbery and other offences where a person does not have to be tried by a judge and a jury.

Senator Flynn: It is at the election of the accused.

Mr. Christie: Yes. If he wants a trial at the top level, he can have it. It is his choice.

The Chairman: Shall clauses 37 and 38 carry?

Hon. Senators: Carried.

The Chairman: Clauses 39, 59 and 76, "Absconding Accused."

Mr. Sommerfeld: Mr. Chairman, the object of these amendments is to enable a court to proceed with the trial of a person who absconds in the course of his trial, and likewise in the case of a preliminary inquiry. The main provisions are that if he absconds during the course of a trial or preliminary hearing, he will, in effect, be deemed to have waived his right to continue to be present until the conclusion. The court can either continue the proceedings or it can adjourn and give the accused reasonable opportunity to reappear, and then reconvene and continue in his absence if he does not show up and the interests of justice require it.

If he reappears while the trial is continuing, he is not entitled to have the proceedings reopened unless the court is satisfied that in the circumstances the interests of justice so demand. His counsel may continue to act for him in

his absence, and the court is obliged, if counsel does continue to act, to give him an opportunity to call witnesses on behalf of the accused.

An adverse inference may be drawn from the fact that he has absconded. In general, the purpose is to enable a trial or preliminary to continue where the accused on his own has decided no longer to be present, to avoid postponements, lengthy delays, disappearance of witnesses, and so on, in the interim. That is about all I have to say, Mr. Chairman.

The Chairman: You have covered clause 39. Does that cover clauses 59 and 76?

Mr. Sommerfeld: Clause 59 has to do with the preliminary.

The Chairman: Do clauses 39, 59 and 76 carry?

Senator Lang: In the interests of linguistic purity, the word "abscond" sounds odd in that context. Does that not mean taking goods?

The Chairman: That is the normal meaning.

Mr. Christie: I am not sure I would agree with that.

Senator Godfrey: It is absconding debtors or absconding people.

Mr. Christie: We may use the phrase "absconding debtors," but, with all due respect, I do not think the word "abscond" necessarily involves running away with property.

Senator Godfrey: No, I do not think so.

Senator Flynn: It is only running away.

Senator Godfrey: Let us approve it, subject to Senator Lang producing a dictionary to show that the wrong word has been used.

Senator Langlois: I submit that the French does not carry the same meaning.

Senator Laird: I was looking at that myself. From the French version, I cannot figure it out.

L'article 431.1 dit:

(1) Nonobstant la présente loi, en cas d'absence d'un prévenu, inculpé conjointement ou non, au cours du procès, ...

and the word "absconds" ...

The Chairman: "Lorsque le prévenu ne comparaît pas à son procès."

It does not appear. At the bottom it is "ne comparaît pas."

Senator Robichaud: I think the French translation is easier than the English and is just as precise.

Senator Laird: Is it just as precise?

Senator Robichaud: Yes.

Senator Flynn: I think the French is not too clear. It means "in the case of absence."

Senator Langlois: You could justify absence.

Senator Flynn: Maybe not voluntarily. "Abscond" means that he defaults.

Senator Godfrey: If you put in that he does not appear, the guy can get caught in the fog or some other reason.

Senator Flynn: It could be "s'il ne se présente pas."

Senator Langlois: Or "En cas d'absence volontaire ou préméditée".

Senator Flynn: This, we do not know. "Néglige de comparaître"—"neglect to appear."

Senator Laird: That is not the answer.

Senator Flynn: "Absconds" means it is a voluntary absence or without justification.

Senator Laird: I think Senator Langlois has a point.

The Chairman: Look at subsection 4: «Lorsque le prévenu ne comparaît pas à son procès».

Senator Flynn: But this is related to the power of his lawyer.

The Chairman: To continue to represent him.

Senator Godfrey: What does the dictionary say?

Mr. Christie: The Shorter Oxford Dictionary reads:

Abscond: To hide away, to hide oneself.

These are the key words:

To go away hurriedly and secretly.

Senator Langlois: That is more than absence.

Senator Laird: It is more than absence. That is what appeared weird to me. "Absence" has a particular connotation in English.

Senator Flynn: "Absence sans justification."

Senator Laird: Yes, this is possible.

Senator Godfrey: "Abscond" seems a suitable word to use.

The Chairman: Yes, but the French translation is not a correct interpretation.

Mr. Christie: Do we agree on the English?

The Chairman: Yes, we agree on the English.

Senator Langlois: We agree on the English, but check the French.

Senator Robichaud: "Absence volontaire d'un prévenu."

Senator Flynn: Yes, but in French we are not obliged to say "sans justification", if he is not told why he does not appear. It is "absconds".

Senator Langlois: Why not use the expression "se défilier de son procès".

Senator Flynn: "Ne justifie pas son absence", That is the meaning.

The burden is on him to indicate why he is not there.

Senator Langlois: "Se défilier" or "absence volontaire" at least.

Senator Flynn: C'est injustifié.

Senator Robichaud: "En cas d'absence injustifiée d'un prévenu".

Senator Laird: Yes.

The Chairman: Well, shall we carry these three clauses, subject to a review of the French translation of the word "abscond"?

Hon. Senators: Agreed.

The Chairman: Is it agreed that we adjourn until 11 a.m. tomorrow?

Hon. Senators: Agreed.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada



FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

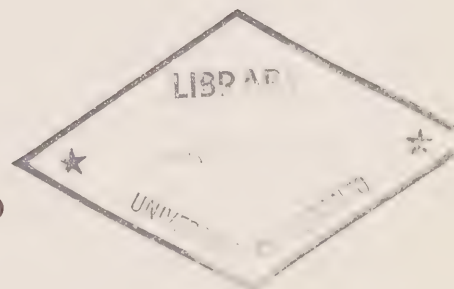
Issue No. 32

THURSDAY, FEBRUARY 26, 1976

Third Proceedings on Bill C-71, intituled:

**“An Act to amend the Criminal Code and to make
related amendments to the Crown Liability Act,
the Immigration Act and the Parole Act”**

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

AND

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(19)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, 18th February, 1976:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Perrault, P.C., for the second reading of the Bill C-71, intituled: "An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, February 26, 1976
(50)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:05 a.m., the Chairman, the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg, Laird, Flynn, Godfrey, Lang, Langlois and Robichaud. (7)

In attendance: Mr. R. L. du Plessis, Acting Law Clerk and Parliamentary Counsel.

The Committee resumed its examination of Bill C-71 intituled "An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act".

The following witnesses, from the Department of Justice, were heard in explanation of the Bill:

Mr. D. H. Christie, Q.C.,
Associate Deputy Minister;

Mr. S. F. Sommerfeld, Q.C.,
Director, Criminal Law Section.

As agreed at its meeting of Tuesday, February 24, 1976, the Committee continued to examine the Bill by clauses or groups of clauses arranged by officials from the Department of Justice by *subject matter*, rather than by usual numerical order of the clauses.

Messrs. Christie and Sommerfeld provided explanations for each clause examined by the Committee. The witnesses then answered questions.

The Chairman called Clauses 40, 41 and 82.

The said clauses carried.

Clauses 42, 43 and 86 carried.

Clauses 47(1), 47(3), 47(4), 47(5), 47(6), 50, 51, 52, 53, 55(3) to 55(6), 56, 57 and 73 were allowed to stand.

Clauses 58, 68, 74, 87, 59.1 and 60 carried.

On clause 61, it was *agreed* that, in the French version only, the word "junior" be added at the end of line 11. Clause 61, as amended, carried.

Clauses 63, 64 and 64.1 carried.

On clause 65, the Honourable Senator Langlois moved that Clause 65 be amended as follows:

In the English version, on line 28, strike out the word "lawful" and substitute therefore the word "legitimate".

The question being put on the said motion, it was agreed to. Clause 65 as amended carried.

Clauses 67, 69, 70 and 71 carried.

At 12:25 p.m. the Committee adjourned to Tuesday, March 2, 1976 at 2:30 p.m.

ATTEST:

Patrick Savoie,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, February 26, 1976

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-71, to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and The Parole Act, met this day at 11.05 a.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are continuing out consideration of Bill C-71. The next item to be dealt with is "Consent of Attorney General," clauses 40, 41 and 82. Would you explain that, Mr. Christie?

Mr. D. H. Christie, Q.C., Associate Deputy Minister, Department of Justice: Mr. Chairman, under the law as it exists, it is possible for a person who has committed the offence of break and enter, let's say, in the province of Manitoba to be apprehended in New Brunswick, and rather than returning him to Manitoba to stand trial for that offence, if the Attorney General for the Province of Manitoba consents, he can be tried for that offence in the province of New Brunswick, if he is prepared to plead guilty.

The purpose of this amendment is to extend the application of that principle to those criminal offences which are prosecuted by the federal government. Generally speaking, the offences under federal statutes, other than offences under the Criminal Code, and conspiracy to commit offences other than those prescribed by the Criminal Code.

The Chairman: Shall clauses 40, 41 and 82 carry?

Hon. Senators: Carried.

The Chairman: The next item is clause 42, "rules of Court."

Mr. Christie: To date, Mr. Chairman, there has been no power for inferior courts of criminal jurisdiction to make rules of court. This has applied to superior courts of criminal jurisdiction and courts of appeal. The purpose of the amendment would allow, subject to the approval of the Lieutenant Governor in Council, the inferior courts of criminal jurisdiction to make rules of the court.

Senator Lang: What makes this amendment necessary?

Mr. Christie: There has been a feeling that there should be, in many instances, rules of the court in these inferior courts. For example, provincial court judges will argue, and with validity, that they handle perhaps 85 per cent of all criminal litigation without rules of court, and they have pressed for the power to make rules of court.

As originally submitted by the government, the power to make rules of court would have been subject to an overriding superintending jurisdiction by the Government of

Canada. That was found to be completely unacceptable to the provinces and the bill is amended in the manner in which it now appears.

Senator Langlois: Why would we make this subject to the approval of the Lieutenant Governor in Council and not the Governor General in Council, since we are dealing with federally appointed courts administering federal statutes?

Mr. Christie: One of the main arguments put forward by the provinces was that we were reaching down to provincially appointed judges.

Senator Langlois: So this could have different application from one province to another?

Mr. Christie: Conceivably, yes. Mind you, rules of court have a limited application. Rules of court do not override substantive rules of procedure that are set out in the Criminal Code or, indeed, in any other federal statute relating to the Criminal Code.

Senator Langlois: But we could be faced with different sets of rules of court in the various provinces?

Mr. Christie: Conceivably, yes. As I indicated, as the bill was introduced by the government, the Governor in Council had an overriding jurisdiction in relation to uniformity of rules, but the provinces objected to that most vigorously.

Senator Robichaud: The provincial rules of court cannot be inconsistent with this act or any other act of Parliament?

Mr. Christie: That is right.

Senator Robichaud: I think that covers the point.

The Chairman: On this point, I notice that the clause making it subject to the approval of the Lieutenant Governor in Council was not in the bill as introduced on first reading, but was added after the committee hearings in the other place. Presumably, it was added at the insistence of the provinces.

Mr. Christie: That is right. As the bill was introduced, the Governor in Council had an overriding jurisdiction, but there was vigorous and unanimous opposition to that proposition from the provinces, and the bill was amended in the manner in which it now reads.

Senator Langlois: What was the original wording, Mr. Chairman?

The Chairman: The original clause started differently, too. It read as follows:

"(1.1) A superior court of criminal jurisdiction for a province may, at any time with the concurrence of a

majority of the judges thereof present at a meeting held for the purpose, make rules of court not inconsistent with this Act or any other Act of Parliament for any court of criminal jurisdiction within the province that is not referred to in subsection (1), and any rules so made apply to any prosecution, proceeding, action or appeal, as the case may be, within the jurisdiction of the court for which they are made, instituted in relation to any matter of a criminal nature or arising from or incidental to any such prosecution, proceeding, action or appeal."

It was entirely different. It was the superior courts making the rules of court for any other courts within the province.

Senator Laird: Mr. Chairman, I can say, from experience, that provincial court judges in the province of Ontario have informally agreed on certain things and now they want it reduced to formality, and I do not blame them.

Mr. Christie: With all due respect, Mr. Chairman, I think the explanation you just gave should be rounded out by referring to section 438 (5).

The Chairman: I simply read clause 42 as it appeared in the first reading version of the bill. If you want to make a further explanation, please do so.

Mr. Christie: The point I was going to make, Mr. Chairman, was that section 438 (5) of the Criminal Code provides as follows:

Notwithstanding anything in this section, the Governor in Council may make such provision as he considers proper to secure uniformity in the rules of court in criminal matters, and all uniform rules made under the authority of this subsection prevail and have effect as if enacted by this Act.

That is where the overriding power came in.

The Chairman: Yes.

Senator Lang: For my own information, is there a section in the Criminal Code empowering the higher courts to make rules?

Mr. Christie: Yes, section 438.

Senator Lang: And this amendment extends that power?

Mr. Christie: Yes.

The Chairman: Shall clause 42 carry?

Hon. Senators: Carried.

The Chairman: The next item is "Loss of Jurisdiction," clauses 43 and 86.

Mr. S. F. Sommerfeld, Q.C., Director, Criminal Law Section, Department of Justice: Mr. Chairman, dealing, first, with clause 43, under the Criminal Code as it now stands, section 465(1)(b)(i) states that a justice holding a preliminary inquiry may adjourn the inquiry for more than eight days, if the accused is not in custody and the accused and the prosecutor consent. There is a somewhat similar provision with respect to summary conviction matters under section 738(1) whereby the court can adjourn a trial for more than eight days on the consent of both parties.

Occasionally, in busy courts there is a technical omission to deal properly with remands and adjournments of this kind. For example, through an oversight, a trial or a pre-

liminary inquiry may be adjourned for nine days instead of eight days. There has been a certain amount of confusion and technical jurisprudence on the subject, with the result that in a number of cases it has been held that there has been a complete loss of jurisdiction simply by the failure to comply with some of these technical aspects.

The purpose of this amendment is to provide that technical non-compliance with the provisions with respect to remands and adjournments will not result in a loss of jurisdiction and that when the accused does not appear, it can be regained by the issuance of a summons or warrant. That is really the only effect of clause 43.

Clause 86, Mr. Chairman, deals with section 725 of the Code. Under section 275, as it now stands, where a man has been arraigned before a summary conviction court, and a plea taken, but the trial has not yet commenced, and for some reason that particular judge cannot continue with the trial, he must specifically waive his jurisdiction to another judge. The object of clause 86 is simply to provide that such formal waiver is not necessary, and that another judge of the same jurisdiction can proceed to try the accused for the offence.

The Chairman: Are there any questions? Do clauses 43 and 46 carry?

Hon. Senators: Carried.

The Chairman: Senator Croll asked that we stand the next item, which is "Bail Reform Act," until next Tuesday, so we will go on to clauses 58, 68, 74 and 87, under the heading of "Medical Examination of Accused."

Mr. Sommerfeld: Mr. Chairman, the object of these proposed amendments is to permit a court that remands a person for medical examination to remand him to some facility, such as an out-patient clinic, rather than into custody. Secondly, it is to permit the admission, where there is no dispute as to the facts, of a medical report rather than requiring a doctor to appear and give evidence *viva voce*. That is the effect of clauses 58 and 68 as well. Clause 58 deals with the provisions that now exist for remand for examination under section 465, and clause 68 deals with the situation under section 543.

Senator Laird: That is because physicians do not like making house calls.

Mr. Sommerfeld: I understand that is what the reason is.

Senator Laird: Let us take that as the reason, anyhow.

Mr. Sommerfeld: I think, senators, the main thing is that in a number of cases it interferes seriously with the professional work of a psychiatrist, and where there is no dispute as to the contents of his report it seems eminently suitable to permit the report simply to go in, without requiring him to attend in court.

Senator Flynn: It is about the same thing as is done in civil matters now, I understand, where you file the reports of doctors with regard to the degree of incapacity, and things like that, when the conclusions are not contested.

The Chairman: Shall clauses 58, 68, 74 and 87 carry?

Hon. Senators: Carried.

The Chairman: Clause 59.1, "Adjournment if Accused Misled."

Mr. Sommerfeld: Mr. Chairman, this is simply to correct what was really a typographical error, originally. Section 474 provides that where the accused has been deceived or misled by an irregularity under section 473 the justice may adjourn the inquiry and remand the accused, or admit him to bail, in accordance with "this Part".

Now, "this Part," is Part XV, but the provisions for judicial release are all in Part XIV. Section 474 is therefore simply being amended so as to make it in accordance with Part XIV, rather than in accordance with, "this Part," Part XV.

Senator Laird: It is a housekeeping amendment?

Mr. Sommerfeld: Yes, senator.

The Chairman: Shall clause 59.1 carry?

Hon. Senators: Carried.

The Chairman: Clause 60, "Material Witness."

Mr. Christie: Mr. Chairman, the effect of clause 60 is really to expand on subsection (1) of section 477 of the Criminal Code, which now provides that:

Where an accused is committed for trial or is ordered to stand trial the justice who held the preliminary inquiry may require any witness whose evidence is, in his opinion, material, to enter into a recognizance to give evidence on the trial of the accused.

The purpose of this amendment is to strengthen that by providing, in addition:

... and to comply with such reasonable conditions prescribed in the recognizance as the justice considers desirable for securing the attendance of the witness to give evidence at the trial of the accused.

The Chairman: Any questions? Does clause 60 carry?

Hon. Senators: Carried.

The Chairman: I would just like to draw to the attention of the committee that clause 59, which is not listed anywhere in here, raises the same question as was raised yesterday with respect to the translation of the word "absconding". The heading of the section is, "Absconding Accused," and the French says, "absence du prévenu." It is definitely not the translation. I am leaving this because the translation is now being looked into. We now have a number of French terms, but we will discuss them at the next sitting.

We now come to clause 61, "Trial Without Jury in Ontario."

Mr. Christie: Mr. Chairman, the object of the amendment proposed in this clause is to give a superior court judge in Ontario concurrent jurisdiction with a county court or district court judge, to try cases without a jury. Part XVI of the Criminal Code provides for the trial of indictable offences without jury where an accused elects this mode of trial. Section 482 defines "judge" with respect to the province of Ontario to mean "a judge or a junior judge of a county or district court." The result is that in that province, where an accused elects to be tried by a judge without a jury, the trial is generally held by a county court judge. In respect of several other provinces, however, section 482 provides that alternatively the trial may be held before a judge of the superior court as an alternative, which, as has been stated, does not exist in respect of the province of Ontario. We are accepting and

putting before you gentlemen this amendment on the basis of representations received from the Province of Ontario.

I will just read this very short passage from my briefing notes.

On its report on the administration of courts in Ontario the Ontario Law Reform Commission recommended that Superior Court judges in Ontario should be empowered to hear cases without a jury where the accused elects trial by a judge without a jury. The recommendation was approved by the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation. The amendment proposed in this clause gives a superior court judge in Ontario that power. Accordingly, upon the enactment of this amendment crown counsel in Ontario may file the indictment either in the Supreme Court of Ontario or a county or district court, where an accused elects trial by judge without a jury.

As I say, we accepted this on the basis of representations received from Ontario, and it goes, of course, to the basic administration of justice in Ontario in the sense of the allocation of judges to try cases. I will be perfectly frank, and say that we have not cross-examined them on this. We can only assume that having the basic responsibility for the allocation of trial judges, and for the management of the hearing of cases, they have considered this problem, and that this is their considered decision.

Senator Flynn: Who makes the election to go before a supreme court judge or before a county court judge?

Mr. Christie: Well, a person would have presumably to elect, basically, to be tried by a magistrate, or, if he elects to be tried by a district judge, then of course there is no question; but if he elects to be tried by a district judge, under this scheme, he could, presumably, according to whatever administrative arrangements might be made by the administration in Ontario, find himself being tried by a judge of the Supreme Court of Ontario.

Senator Flynn: It is all a question of the distribution of work as between a district judge and a supreme court judge, is it?

Mr. Christie: Presumably. That is what it must be based on. As I say, in all frankness we did not cross-examine them on this. Personally, I was quite surprised to hear it, because we hear reports that supreme court judges in Ontario are overworked as it is; but there may be all kinds of administrative reasons for it. There may be a supreme court judge available in North Bay, for example, and no county court judge. Therefore, under the circumstances, in order to expedite justice in North Bay the supreme court judge who is there for other reasons may well hear the case.

Senator Flynn: But who is going to tell the judge that he will have to hear that case? Ordinarily, if it is the same court, the chief justice will allocate the work.

Mr. Christie: It will have to be a matter of the administration of cases.

Senator Laird: The chief justice will do that, surely.

Senator Flynn: But I understand that there is a chief justice in the Supreme Court of Ontario who allocates work to his judges, and that you also have a chief justice of the district court. If there is a conflict between the two, who is going to resolve it?

Senator Godfrey: Is it up to the prosecutor to decide these things?

Mr. Christie: It would not be the prosecutor, I am sure.

The Chairman: Well, it surely would not be the accused who would have the choice!

Senator Godfrey: I would have thought, from a practical point of view, that it would be the prosecutor in a very important case who would decide.

Senator Flynn: It is a conflict between the two chief justices that I see here, though. Mr. Christie has faith in the recommendation, and he wants us to have the same faith.

Mr. Christie: Quite frankly, basically we are acting on the basis of a representation received from Ontario in relation to the administration of their courts.

Senator Flynn: Would you try to find out what will be the process or method of allocating cases between the two levels of the courts?

Senator Godfrey: And what is the statutory authority?

Mr. Christie: This will be.

Senator Godfrey: I do not see that this would be the statutory authority for deciding which of the two courts it will be.

Senator Flynn: But how will it work out in practice?

Senator Laird: Yes, that might satisfy everybody if you could find that out.

Mr. Christie: We could inquire, but I think honourable senators should appreciate that there is nothing novel about this. Ontario is not asking for something that does not exist in other provinces. Under section 482 you can take judges who can try summarily under Part XVI.

The Chairman: Well, take British Columbia, for example, under (c). Then you can take Saskatchewan and Alberta or Newfoundland. They are not asking here for anything that does not exist in other provinces.

Senator Flynn: I am not doubting your word, but I was trying to find out how the allocation is going to be made in practice. Who has the final word as to whether a supreme court judge will hear a case rather than a district court judge or vice versa?

The Chairman: Well, there must be a system. For example, in British Columbia it could be the chief justice or a puisne judge of the supreme court or a judge of a county court. Somebody must have the final authority to allocate. But you would like to know how they do it?

Senator Flynn: Yes, if that is possible I am not insisting. It seems to me that we are invited to approve something that we do not understand completely.

The Chairman: Well, it is really an administrative matter.

Senator Godfrey: Yes, but the administrator must have some statutory authority or something which permits somebody to make a decision.

Senator Flynn: Well, at any rate, that is what we want to know if it is possible. Could you inquire?

Mr. Christie: We can, but I can tell you this much; in other provinces where superior court judges—and we have listed a number—can try these cases, we know of no statutory basis for that, and we can only assume that it is done on an administrative basis, and presumably if Ontario is added to the list, then there it would be on the same basis. I imagine that in a province like Ontario there must be a very complex machine to allocate judges to hear cases and presumably that same machine will have to take care of this.

Senator Flynn: I do not doubt it.

The Chairman: Senator Flynn wants to complete his education!

Senator Flynn: If we have to be here, we might as well try to learn.

The Chairman: Perhaps, Mr. Christie, it would be no great problem to find out how it works in the other provinces.

Senator Flynn: Normally the allocation of cases is made by the chief justice of the court, and where there are two courts there will be two chief justices, competing either to hear or not to hear.

The Chairman: Well, honourable senators, perhaps Mr. du Plessis could look into that.

Senator Robichaud: I am intrigued by the expression “junior judge”. I thought the expression was a judge of an inferior court. Is this a new expression, and if it is, what is the definition of “junior judge”? Then, if it has a meaning in the English text, why is it not translated into the French text? There is no reference to “junior judge” in the French text.

Senator Godfrey: Well, usually in Ontario there is one county court judge per county, but in the case of Toronto you might have 20, so there you have a senior judge and the rest are all junior judges.

Senator Flynn: The junior judge would be a puisne judge.

Senator Godfrey: Each county might have two only, and one would be the senior judge and the other would be the junior judge.

Senator Robichaud: In other words, Ontario has a system of a chief justice, and then at the same level of court, whether provincial court or county court, you have the most junior and the less junior and then you come to the less senior and the most senior?

Senator Godfrey: No, we have supreme court, county court and provincial court, and at this level they are appointed to various counties. If you happen to have more than one county court judge in a county, then all judges except the senior are junior judges.

The Chairman: And he is designated as the senior judge?

Senator Godfrey: Yes.

Senator Robichaud: I notice that that point is not in French at all.

The Chairman: Perhaps the French did not think that any judge should be a junior judge!

Senator Robichaud: Well, the law is the same for the English as for the French in Ontario, I hope.

Senator Flynn: I think in French you just have to add the word "junior" after the word "juge" at the end of line 11. Because they said "ou un juge—ou un juge".

Senator Robichaud: That is a typographical error.

Senator Flynn: If you add "junior" after the second time you use "juge" in line 11, then you correct the situation. It is quite obviously an error in printing. They just missed the word. It should be "un juge junior".

Senator Robichaud: Yes, that is a printing mistake, but what I would like to have included here is the word "junior" somehow or other.

The Chairman: Does clause 61 carry, subject to correction of the French text?

Hon. Senators: Carried.

The Chairman: That is on page 44, line 11, the French text requires correction.

Senator Robichaud: Two corrections, the misprinting and the adding of the word "junior".

The Chairman: Yes.

Mr. Christie: Could I interject, just a moment, Mr. Chairman? I am not certain about this and I would have to look into it, but there are junior as opposed to senior county court judges recognized in all provinces in Canada. I know they are in the County of Vancouver in British Columbia and I know it happens in Ontario, but I am not sure that it is a universal practice.

Senator Godfrey: But this section only applies to Ontario.

The Chairman: May I draw to your attention that in the present section 477 the French text says:

a) dans la province d'Ontario, un juge, ou un juge junior, d'une cour de comté ou de district.

Mr. du Plessis: "Junior" is in italics, which means that the English word is incorporated into the French text without being translated into French. I do not know that we even need a formal amendment.

The Chairman: We don't but what we should do is add the word "junior" at the end of line 11.

Senator Robichaud: I think that covers it.

The Chairman: I do not think it requires a formal amendment. You say they do it in italics here.

Clause 61 carries.

Next, clause 63, "Abolition of Grand Juries".

Mr. Christie: The grand jury, of course, as members of the committee are well aware, has been an historical institution going back, I suppose, centuries. It is, however, disappearing in Canada. Indeed, it has, to a large extent, already disappeared. The Provinces of Newfoundland, Prince Edward Island and Ontario have now asked to be added to the list of provinces in which the grand jury no longer exists. That will leave only the Province of Nova Scotia with that institution.

The basic argument against the grand jury is that it is superfluous, in the sense that where there is a preliminary inquiry of the type that is held in all jurisdictions, to then go before a grand jury once the person has been committed to stand trial to seek an indictment is completely redundant. That, basically, is the reason for these provinces requesting that the institution of the grand jury be dispensed with.

Senator Flynn: Have the federal authorities asked the provincial authorities of the Province of Nova Scotia whether it is the desire to retain the grand jury in Nova Scotia?

Mr. Christie: The Nova Scotia officials have made it clear that they want to retain it, at least for the time being.

Senator Godfrey: One of the functions of the grand jury was to examine the jails.

Mr. Christie: Yes, they had a number of functions. There were arguments about whether they were really functioning in those capacities and what was really the lawful role of a grand jury. Presumably, the Provinces of Newfoundland, Prince Edward Island and Ontario feel that there are more appropriate vehicles for looking into those areas which formerly fell within the jurisdiction of grand juries, beyond whether or not an indictment should be preferred in a particular case.

Senator Godfrey: I must say, as long as I can remember, grand juries in Toronto always condemned the Don Jail, but no one paid the slightest bit of attention to them.

Senator Laird: That is true in Windsor, too.

The Chairman: The heading is "Abolition of Grand Juries." The wording is as follows:

"507.(1) In the Provinces of Newfoundland, Prince Edward Island, New Brunswick, Quebec Ontario, Manitoba, Saskatchewan, Alberta and British Columbia and in the Yukon Territory and Northwest Territories it is not necessary to prefer a bill of indictment before a grand jury . . .

Mr. Christie: In substance, Mr. Chairman, it is the same. If the grand jury has no function to perform under the Criminal Code, it is in effect, abolished.

Senator Flynn: It is subtly abolished.

Senator Lang: Might not an accused insist on a grand jury?

Mr. Christie: If the institution has no function, it is in a vacuum,

Senator Lang: But the words are "it is not necessary." Can the accused then say that he requires it?

The Chairman: It goes on to say:

"—it is sufficient if the trial of an accused is commenced by an indictment in writing setting forth the offence with which he is charged."

Senator Flynn: It is still in the Code. It could be used.

Mr. Christie: We can double check this, but this formulation is simply an adaptation of the formulation that has been applied to all the other provinces.

The Chairman: I do not question that. I am simply suggesting that with the words "it is not necessary" it might still be used.

Senator Lang: The officer of the crown could still prefer a bill of indictment to the grand jury under the proposed section.

The Chairman: He does not have to, but he could. That is my interpretation.

Mr. Christie: Except that concurrently the provinces will abolish the institution of the grand jury. That is what the Province of Ontario intends to do.

Senator Flynn: By way of legislation or simply by not making use of it?

Mr. Christie: As a matter of fact, I have a letter from the Deputy Attorney General of the Province of Ontario asking me, if and when Bill C-71 passes, to give him sufficient time to make sure that they abolish the institution of the grand jury.

Senator Robichaud: They will do so by legislation, then?

Mr. Christie: Yes. The problem is that the grand jury is not created under the Criminal Code; it is a provincial institution.

Senator Laird: That is the answer.

Le sénateur Langlois: Monsieur le président, on n'abolit pas le grand jury, mais c'est une mise au rancart, cela.

Mr. Christie: If Parliament adopts this amendment, the Province of Ontario, and the other provinces in question will, in due course, simply enact legislation abolishing the grand jury.

Senator Robichaud: We do not have to do so in New Brunswick. We did it in 1959.

Senator Flynn: Under a very progressive government.

Senator Langlois: A good premier.

The Chairman: Does that remark carry with clause 63?

Senator Lang: On division.

Senator Flynn: It cannot stand alone.

The Chairman: Does clause 63 carry?

Hon. Senators: Carried.

The Chairman: Next, clause 64, "Compelling Appearance of Accused."

Mr. Sommerfeld: Mr. Chairman, this is in connection with the preferring of an indictment. The relevant sections of the Criminal Code are sections 404, 405 and 407, all of which set out the procedures under which an indictment may be preferred, either in a grand jury province or a non-grand jury province. In either case, however, there is a procedure for proceeding by way of direct indictment without a preliminary inquiry and bringing a charge against an accused under those circumstances. In many cases, this may occur under circumstances before the arrest or the accused's being served with any process. As the law now stands, there is really no procedure for compelling his attendance or bringing him before the court where there is a direct indictment and he has not previous-

ly been arrested and released, or something of this kind. There is a gap in that respect in the legislation. The purpose of the amendment contained in clause 64 is to close that gap and provide that the judge may issue a summons or a warrant if he feels such a step is necessary.

Senator Flynn: Is a direct indictment the same as a preferred indictment?

Mr. Sommerfeld: My understanding is that "preferred" is the operative word when you set an indictment in motion. It takes place after there has been a preliminary inquiry or after a grand jury has returned a true bill. In a case where there is no preliminary inquiry, the indictment is preferred direct.

Senator Flynn: In the Province of Quebec, it was simply at the discretion of the attorney general. He could issue a preferred indictment sending the accused directly before the court—generally before a court composed of a judge and a jury.

Mr. Sommerfeld: Yes.

Senator Flynn: It is just a matter of bypassing the preliminary inquiry stage.

Mr. Sommerfeld: Yes.

The Chairman: Shall clause 64 carry?

Hon. Senators: Carried.

The Chairman: Next, clause 64.1, "Interim Release."

Mr. Sommerfeld: Mr. Chairman, this clause is relative to section 526 of the Criminal Code. Section 526(1) now provides as follows:

526.(1) Where an indictment has been found against a person who is at large, and that person does not appear or remain in attendance for his trial, the court before which the accused should have appeared or remained in attendance may issue a warrant... for his arrest.

As the law now stands, if he is arrested and brought before the court, that court has no power to release him under the interim release provisions, notwithstanding that it might be quite desirable to do so. The only object of clause 64.1 is to add subsection (3) to section 526, to empower a judge to release the accused and to impose the usual conditions that a justice could otherwise impose.

The Chairman: Does clause 64.1 carry?

Hon. Senators: Carried.

The Chairman: Clause 65, "Failure to Appear at Trial."

Mr. Christie: Mr. Chairman, the object of this amendment is to deny a jury trial to an accused who, having elected to be tried by a court composed of a judge and jury, fails to attend at his trial, or fails to appear.

Under the present law, where an accused elects trial by judge and jury a panel of jurors is summonsed to attend on the date appointed for the trial, and from that panel the accused and the prosecutor select the requisite number of jurors who will constitute the jury for the purposes of that trial. After his selection the remaining members of the panel are excused until required for another trial. Where the accused fails to attend for his trial on the date appointed for that purpose the public funds expended is summons-

ing the panel are wasted, and, as well, the judge, jurors and administrative personnel of the court are inconvenienced.

As indicated, the sum and substance of this is that if you elect to be tried by a court composed of a judge and jury, and then you abscond—although I had better use another word, perhaps—or if you fail to appear, you will not be entitled to be tried by a court composed of a judge and jury, but you will be tried by a judge alone.

Senator Laird: Except, of course, that there is provision here that if the accused has a lawful excuse, that is different. He is protected in that way.

Mr. Christie: Yes, he is protected, as the honourable senator points out under (a) and (b).

(a) he establishes to the satisfaction of a judge of the court in which he is indicted that there was a lawful excuse for his failure to appear or remain in attendance for his trial; or

(b) the Attorney General requires pursuant to section 498 that the accused be tried by a court composed of a judge and jury.

Senator Flynn: The word “abscond” there is correct.

Mr. Christie: After yesterday’s argument, I am shying away from it.

Senator Godfrey: Why is the expression “lawful excuse” used instead of “reasonable excuse”, and what is the difference?

Mr. Christie: The phrases “lawful excuse” and “reasonable excuse” appear scattered throughout federal legislation, both in regulations and statutes. Quite frankly, I am not prepared to attempt any kind of authoritative definition of what constitutes “lawful excuse” as opposed to “reasonable excuse”.

Senator Flynn: In French, it is “legitimate excuse”, which is not as strong. I think we should use the French expression translated into English.

Senator Godfrey: Take an example. Yesterday the chairman of the Ontario Caucus, one of whose planks is punctuality, was ten minutes late for a meeting timed to begin at 9.30, although he had hit the Queensway at 7 o’clock in the morning and got stuck. That certainly was a very reasonable excuse, but is it a lawful excuse?

Senator Robichaud: It is both lawful and reasonable.

Mr. Christie: As I say, the phrase “lawful excuse” and the phrase “reasonable excuse” appear almost interchangeably in many contexts.

Senator Godfrey: It seems to me that the word “reasonable” here is better than “lawful”.

Senator Flynn: Or “legitimate”.

The Chairman: I prefer the French word “legitimate”.

Senator Flynn: “Lawful excuse” could mean that he was arrested somewhere else. That would be a lawful excuse.

Senator Godfrey: Could we approve an English translation to conform with the French expression?

Senator Flynn: I do not think it would require a formal amendment.

Mr. R. L. du Plessis (Acting Law Clerk and Parliamentary Counsel): We would have to have a formal amendment in this case.

Senator Flynn: If you agree, we could do it now.

Mr. Christie: I might, perhaps, Mr. Chairman, interject at this point and say this, that there is a project under way in the Department of Justice about which the profession and others have been canvassed, in terms of which we have asked all of you to bring to our attention this kind of anomaly and any anachronisms that may exist in the law. What we hope to do is to bring them all together, take a look at them, get rid of the ones we can get rid of, and try to bring more symmetry to the whole piece. This is a project that is well under way in the Department of Justice, and the response from the profession and the judiciary has really been quite out of the ordinary.

Senator Flynn: It would take the form of an omnibus bill each year, probably, on matters which are not controversial.

Mr. Christie: Senator Flynn, what we hope to do is bring in, not a final bill, since of course nothing is final, but a bill that would try to get rid of these conflicts, as for example the case in which you find “lawful excuse” in one place and “reasonable excuse” in another place, then another phrase somewhere else, and yet a fourth somewhere else again, which really all mean the same thing, and where a particular word or phrase should be chosen.

Senator Flynn: We have all received a letter from the Minister of Justice about that.

Senator Langois: You would not have to wait until you have a revision of the statutes to do that, would you?

Mr. Christie: Oh no. If the bill were in reasonable shape, say, in a year, which may sound like a long time, but which is not really long for a project of this type, it could be introduced within that year as a bill to take care of such things.

Senator Langlois: It would be like an interpretation act, would it?

Mr. Christie: No, it would not be an interpretation act. It would be, rather, an act to clean up inconsistencies in the use of language, anachronisms and that sort of thing.

Senator Flynn: And repetitions. I am going to write to you to suggest including in this the repeal of section 26 of this bill, with regard to cattle.

Mr. Christie: Senators know better than I that there are bills on the books that were enacted in 1867, for instance. I do not know if any of you have ever tried to plow through a Customs Act of that vintage?

Senator Godfrey: In the meantime the English and French should conform in this particular clause, the French being preferable to the English.

The Chairman: We are just looking at the translation of “légitime.” It gives “legitimate; lawful.”

Senator Flynn: I do not think “légitime” in French has the meaning of “lawful”.

The Chairman: Well, this is the translation given here.

Senator Godfrey: But the nuance is different, perhaps.

Senator Flynn: If you look at "légitime", in a French dictionary, you might find something different.

The Chairman: You mean the meaning of "légitime" in a French dictionary. I agree with you that "légitime" is a broader term. Do we want to suggest that it be changed?

Senator Langlois: I think we should change it. We have the bill before us.

Senator Godfrey: This is the kind of thing we are supposed to do, surely—probe and polish legislation?

Senator Flynn: It would not hurt the purpose.

Mr. Christie: The bill has to go back anyway.

The Chairman: Well, do we want to suggest that it be changed to "legitimate"?

Senator Langlois: I would so move.

The Chairman: It is moved by Senator Langlois that the word "lawful" in line 28 of the English text be changed to "legitimate". All in favour? Carried.

On the point of French and English, I happened to notice that in clause 64 the French text says,

64. Ladite loi est en outre modifiée par l'addition . . .

Clause 64.1 says:

64.1 L'article 526 de ladite loi est modifié par l'adjonction . . .

Clause 65 says, again:

65. Ladite loi est en outre modifiée, par l'addition . . .

The three of them are a translation of the English word "adding". Is there any reason for saying "l'adjonction"? It is not important, but . . .

Senator Flynn: "Adjonction" means the same thing. I prefer it. "Addition" in French means something mathematical.

The Chairman: I do not think we will bother about it, but it is just a matter of interest.

Mr. du Plessis: They were drafted at different times. Clause 64.1 was added when the Bill was going through the House of Commons.

Senator Robichaud: Mr. Chairman, I see another anomaly here. It might seem discriminatory. A person described under the English version needs just one lawful excuse, but if a person is tried under the French version he needs a number of lawful excuses.

Senator Langlois: Then, I think I should change my motion to "legitimate excuses".

Senator Flynn: You do not have to have more than one. I think that in English it is clear that "legitimate excuse" would include more than one and "excuses légitimes" in French would mean that you need only one.

Mr. Christie: May I point out that under the Interpretation Act the singular includes the plural and the plural includes the singular?

Senator Robichaud: Why does that not apply to both English and French?

Mr. Christie: It does.

Senator Flynn: In French I think you would use the plural, whereas in English you would use the singular. It is a question of *génie de la langue*.

The Chairman: Shall clause 65 carry, as amended?

Hon. Senators: Carried.

The Chairman: Then we come to clause 67.

Mr. Christie: Mr. Chairman, the object of the amendment proposed in this clause is to require that an accused pay a reasonable fee for a copy of the evidence taken of his preliminary inquiry. Paragraph 531(b)(i) of the Criminal Code reads in part:

An accused is entitled after he has been committed for trial or at his trial, . . . (b) to receive, on payment of a reasonable fee not to exceed ten cents per folio of one hundred words, a copy of the evidence.

It was pointed out at a meeting of the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation that a fee of 10 cents per folio of 100 words does not cover the cost of production and in the light of national legal aid there was no longer a need to subsidize transcripts for preliminary inquiries. Accordingly, the Commissioners recommended that the section be amended by deleting the words "not to exceed ten cents per folio of one hundred words."

The Chairman: Shall clause 67 carry?

Hon. Senators: Carried.

The Chairman: Then we come to clauses 69, 70 and 71, "mentally Ill Accused."

Mr. Christie: Mr. Chairman, I will ask Mr. Sommerfeld to speak to this. He happens to be a member of a national group which constitutes the boards of review and we will have the benefit of what he has to say in relation to a convention that was held in Vancouver within the last two or three months on that point.

Mr. Sommerfeld: Mr. Chairman, these clauses have to do with section 545 of the Criminal Code and 547 which provides for the appointment of boards of review in certain provinces for the purpose of advising lieutenant governors with respect to people held under what are called Lieutenant Governor's Warrants. I believe it was three years ago that an organization was formed of members of the boards of review, the purpose of which was to get together at regular intervals and discuss the particular problems that presented themselves in the discharge of their functions as advisers to lieutenant governors. These proposed amendments arise out of recommendations that they made at their meeting a year ago last fall.

If I can deal with those just briefly, clause 69, first of all, provides for an amendment to section 545. At the present time the lieutenant governor can discharge a person from custody and require him to comply with certain conditions, such as living in a particular place or submitting to treatment, medication, and so forth, but there is no express power to deal with a case where the person may breach such conditions. There are also situations that arise from time to time where it may be desirable to transfer a person being held under a lieutenant governor's warrant to a facility in another province where, perhaps, he has family or where there may be more adequate facilities for dealing with him. and there is no provision for that kind of transfer.

Clause 69 adds a number of subsections to section 545, the purpose of which is to enable and facilitate the transfer of a person being held from one place in Canada to another, with the consent of the operator of the facility to which he is to be transferred, and to provide, where there is a breach of conditions of his discharge, that he may be arrested, and it gives power to a justice before whom he is brought to make such order as seems desirable under the circumstances pending a decision of the lieutenant governor. That is really what clause 69 is about.

Clause 70 relates to section 546, and under section 546 the lieutenant governor can order a mentally ill person in a prison in a province to be removed to a place of safekeeping, named in the order. In the way this provision is framed at present, it is not at all clear that the lieutenant governor's power is restricted to those persons in prison who have actually been convicted of an offence and it could at the present time be applied to somebody who is awaiting trial or something of this kind. So that the object of this particular amendment to 546 is to ensure that it is applied only to a person who is serving a sentence. There are obviously other provisions for remanding a person who has not yet been convicted but who is in custody for a mental examination, if that seems desirable.

Clause 71 deals with section 547(5). Section 547(5), paragraphs (c), (d) and (e), at present deal with what the review by the board should contain. They set out the things which are supposed to be in the reviewing report of the board. The board felt that these were really too restrictive and that they should be free to recommend in addition to those things in (c), (d) and (e)—anything further which in their opinion would be in the interests of the recovery of the person being held.

Section 547(7) has to do with the question of making rules. The Code at present does not prescribe rules and procedure for the operation of the board. They make their own rules and generally they manage to conduct their inquiries without too much difficulty, but they did recommend that they be given some express powers, where necessary, for example, to subpoena witnesses, so that they could ensure that the full facts relevant to their recommendation could be brought before them.

This amendment in (7) is to give the chairman of the board the same powers as those given to a commissioner of an inquiry under sections 4 and 5 of the Inquiries Act.

Senator Lang: Mr. Sommerfeld, did you say that the lieutenant governor's power to make an order under section 545 is only available after conviction?

Mr. Sommerfeld: No, no. This is an amendment to section 546. Section 546(1) says:

The lieutenant governor of a province may, upon evidence satisfactory to him that a person who is insane, mentally ill, mentally deficient or feeble-minded is in custody in a prison in that province, order that the person be . . .

and so on. It is to ensure that those words, "in custody in a prison," do not extend to persons who have not been convicted of an offence, such as someone who is in custody awaiting trial, because there are other provisions for that.

Senator Lang: I have some concern about the problem of dealing with young drug offenders who are, in effect,

mentally ill under the influence of drugs. When such people are brought before the court, the judge may find himself reluctant to enter a conviction under the circumstances, wishing to avail himself of this power under these sections but unable to without registering a conviction.

Mr. Sommerfeld: There is always the power to remand a person in custody—or, indeed, with these amendments in some cases out of custody—for a mental examination prior to conviction. Is your question directed toward the kinds of treatment that should be given him?

Senator Lang: It would seem that there would be appropriate cases where a judge should have available to him the provisions of these sections even though he does not wish to convict.

Mr. Sommerfeld: He has available to him, prior to conviction, the power to remand a person for a mental examination.

Senator Lang: I know that.

Mr. Sommerfeld: If he does decide to convict, he can recommend, for example, that the sentence be served in some kind of mental facility. But section 546 itself is really directed towards the situation in which the person has been convicted, is serving a sentence and is then found to be mentally ill. This would enable the lieutenant governor to order him placed in an institution. It is intended to cover that situation and not to cover the situation of a person who has not yet been convicted of any offence.

Senator Lang: Do you think it should be extended?

Mr. Sommerfeld: Extended to what, senator?

Senator Lang: Should it be made available in connection with a person who has been brought to trial but has not been convicted?

Mr. Sommerfeld: The Law Reform Commission has been giving a great deal of attention to that area and to the question of the diversion of people who are in the criminal justice system where it is felt desirable that they should not be convicted or that they should not be dealt with in the ordinary corrective ways, but that there should be some diversion available to them. No doubt the Law Reform Commission will be making recommendations to the government about this is due course.

Senator Lang: No recommendation has been forthcoming so far?

Mr. Sommerfeld: I believe there has been a working paper on the question of diversion. So far as I am aware, however, there has been no final report on that particular area of their studies.

The Chairman: That is correct. There is a working paper.

Senator Lang: Thank you, Mr. Sommerfeld.

The Chairman: Shall clauses 69, 70 and 71 carry?

Hon. Senators: Carried.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*



Issue No. 33

TUESDAY, MARCH 2, 1976

Fourth Proceedings on Bill C-71 intituled:

**“An Act to amend the Criminal Code and to make
related amendments to the Crown Liability Act,
the Immigration Act and the Parole Act”**

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(19)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, 18th February, 1976:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Perrault, P.C., for the second reading of the Bill C-71, intituled: "An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, March 2, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m., the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Croll, Flynn, Hastings, Laird, Langlois, McGrand, Robichaud and Smith (*Colchester*). (10)

In attendance: Mr. R. L. du Plessis, Acting Law Clerk and Parliamentary Counsel.

The Committee continued its examination of Bill C-71 intitled "An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act".

The following witnesses, from the *Department of Justice*, were heard in explanation of the Bill:

Mr. D. H. Christie, Q.C.,
Associate Deputy Minister;

Mr. S. F. Sommerfeld, Q.C.,
Director, Criminal Law Section.

As agreed upon at its meeting of Tuesday, February 24, 1976, the Committee continued its examination of the Bill by clauses or groups of clauses arranged by *subject matter* rather than by the usual numerical order.

Clause 9 which, at the Committee's last meeting, had been allowed to stand for renewed consideration, today was discussed again. Mr. Christie read telegrams he received from the Attorney General of several Provinces to the effect that the court has in the past refused to accept uncorroborated testimony of peace officers in instances where persons were charged with creating a Disturbance in a Public Place under Section 171 of the Criminal Code. Generally, the Attorneys General approved the amendment to Section 171 of the Criminal Code as contained in Clause 9 of Bill C-71.

After discussion, the Honourable Senator Flynn *moved* that Clause 9 of the said Bill be deleted. The question being put, the motion was declared *lost*.

Clause 9 carried.

With respect to the French version of Clause 9 Mr. Christie agreed to provide a written report to the Committee on the translators' explanation of the word "indéterminée" contained in the said Clause.

The Committee discussed the French text of Clauses 39, 59 and 76 and again agreed to defer a decision on this

matter until a report from the translators of the Department of Justice is presented to the Committee.

Clauses 47(1), 47(3), 47(4), 47(5), 47(6), 50, 51, 52, 53, 55(3) to 55(6), 56, 57 and 73 carried.

After discussion, it was agreed that further consideration of Clause 75 be deferred until the Minister of Justice appears before the Committee to express his views on this particular amendment.

Clauses 77, 78, 79, 80, 81, 83, 84, 88, 89, 90, 91.1, 92, 93, 94 and 95 carried.

At 4:50 p.m. the Committee adjourned until Thursday, March 4, 1976.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 2, 1976.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-71, to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act, met this day at 2.30 p.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, at our meetings last week we had proceeded as far as clause 75, which is called here, "Morgentaler Case, Provisions re Appeals."

There were five or six items which we deferred, including the Bail Reform Act, which Senator Croll wanted me to hold until he could be here. Shall we start with the Bail Reform Act?

Senator Flynn: If you wish, Mr. Chairman. Before doing so, however, I thought Mr. Christie was supposed to check on the question of the police case in Vancouver.

The Chairman: Yes. Section 9. I am prepared to go over the ones that we left, of course.

Senator Flynn: It is just that this was left also, in case we could have some additional evidence.

The Chairman: Yes. Clause 9, "Creating Disturbance in Public Places." We will start with that, then, if you have an explanation, Mr. Christie.

Mr. D. H. Christie, Q.C., Associate Deputy Minister, Department of Justice: Mr. Chairman, honourable senators, as a result of our previous meetings and discussions in relation to clause 9, I had a national survey conducted by Miss Janice Cochrane, one of the legal officers of the Criminal Law Section of the Department of Justice. On March 1, Miss Cochrane sent me this memorandum, which reads, in part, as follows:

I have contacted senior officials in the Provincial Departments of Justice concerning the above section.

The section in question, of course, is section 171.

Each individual was reminded that the criminal law section at the Conference of Commissioners on Uniformity of Legislation in Canada resolved, at the 1973 meeting, that the Criminal Code be amended in order to allow peace officers to testify as to the element of disturbance in an offence under section 171. I asked each individual whether or not, in the light of experience since that time, the amendment as proposed by clause 9 of Bill C-71 is still necessary. Each province responded positively.

We took the trouble to ask each province to let us have their reaction in writing, and I have telexes from each of the provinces. Some are very short; some are of medium

length. Subject to whatever ruling you make, Mr. Chairman, it might prove salutary to read into the record what each province has said in relation to clause 9.

The Chairman: I think we should do that, because at our last meeting consideration of that clause—which clause we had approved originally—was re-opened and it created a lot of concern. Would you proceed, then, to read the views of the provinces, Mr. Christie?

Senator Laird: Does this cover the ten provinces?

Mr. Christie: The ten provinces. Some are long, and some are very short. It will take a few minutes to read them into the record.

Senator Croll: I am prepared to take Mr. Christie's word that their answers are "yes", and put them into the record.

Senator Flynn: I do not mind that either, of course, but if there is some argument in some of the letters, I would like to hear it, because up to now I am not entirely convinced.

Senator Langlois: We are not that pressed for time. How long would it take, Mr. Christie? Ten minutes?

Mr. Christie: Not more.

The Chairman: Go ahead, then, Mr. Christie.

Mr. Christie: These are all addressed to me. The first one is from British Columbia and it is as follows:

Re Proposed Section 171 Understand proposed amendment under critical examination by Senate committee. The proposed amendment was in fact the result of recommendations by the Law Conference Commissioners in 1973. The difficulties with the section prior to this amendment and court rulings was that it precluded evidence of police officers being used to give evident evidence that a disturbance had in fact occurred. The relevance of the situation are that many disturbances take place outside apartment blocks, town housing developments and other multiple use facilities without in fact members of the public appearing on the scene whose evidence might be used to prove a disturbance. It is common place to receive information that people had viewed the disturbance from their windows, had contacted police but had refrained from going outside for fear of violence to their person. All commissioners cited examples to such situations and as a result the amendment was recommended.

N A McDiarmid

Director Criminal Law

Dept. of the Attorney General

Victoria British Columbia

The next one is as follows:

Re section 171 Criminal Code I would confirm our Manitoba experience indicates the proposed amendment in Bill C-71 to section 171 is required. Manitoba Deputy Director of Prosecution, Bill Morton, recalls two cases where there were acquittals because the court refused to convict on the evidence of police officers.

In one case, in the early morning hours, telephone complaints were made by citizens to the police department because a person was screaming shouting and swearing on their street. When police attended in response to the complaint they found a person on the residential street still screaming shouting and swearing. The persons who complained did not leave their names or addresses. The police did not knock on doors to determine who were the complainants. At the trial of the matter the court refused to convict on the evidence of the police officers alone.

In another case police officers on patrol observed traffic being impeded by a person who was walking along the roadway screaming shouting and swearing. Here again the court refused to convict on the evidence of the police officers alone.

I would advise that in the province of Manitoba most summary conviction courts would infer from the evidence of the police officers in these cases that a disturbance was caused or occurred. The proposed amendment clarifies the law to those judges who have refused to convict no matter how strong the evidence of the testimony only of police officers.

I further note that the amendment does not require the court to make any inferences, it merely clarifies the law that the court may make an inference that a disturbance was caused or occurred on the testimony of a police officer. G. R. Goodman, Assistant Deputy Minister Department of Attorney-General Province of Manitoba.

Senator Robichaud: Mr. Chairman, may I ask Mr. Christie if all the other letters are along the same lines?

Mr. Christies: Yes, they are. I think that is a fair statement to make.

Senator Robichaud: Well, then, I do not see the necessity for reading them all. I think it is a waste of time to continue reading them.

Senator Croll: But if we do not read them, then we will hurt the feelings of the other attorneys general!

Senator Robichaud: But it will be on the record.

Senator Croll: But they will all want them read.

Senator Flynn: I would like to find out whether the others are more convincing than the two you have read.

The Chairman: Well, I notice some of them are very short, so perhaps it would be as well to have them all read into the record.

Mr. Christie: The next one is a translation which I have made, with some assistance. It says:

Very pleased of proposed amendment to Section 171 of Criminal Code. In the future will be possible to succeed in this prosecution. Gérard Girouard, Crown Counsel of Attorney General of Quebec.

For the record, Mr. Chairman, I also have the French text here.

Senator Flynn: That is all right; it is quite clear.

Mr. Christie: The next one is as follows:

This is to inform you that the province of New Brunswick continues to support the amendment contained in Bill C-71, section 9, adding a subsection 171 of the Criminal Code.

Since 1973 we have experienced great difficulty in effectively dealing with creating a disturbance. At the Conference of Commissioners on Uniformity of Legislation in Canada held in 1973, this province supported a motion that peace officers be able to testify as to the element of disturbance and we continue to feel such an amendment is necessary to effectively carry out the intent of the Criminal Code.

From:

Gordon F. Gregory, Q.C.

Deputy Minister of Justice

Province of New Brunswick

The next one is as follows:

There are a large number of prosecutions under section 171 in the province most of which contain the potential for "violence" involving the police and other persons in public places. It is difficult to obtain convictions because of the requirement that there be a "public disturbance". Persons witnessing the incident are reluctant to come forth and be witnesses and very often are friends or associates of the offending party so the police officer finds himself in the unenviable position of attempting to convince the court there was a disturbance without the corroborative evidence of others. It also means the police can be subjected to verbal abuse in public without recourse to section 171. The calls for great restraint on the part of the police-men because the law places him in a helpless position. Some magistrates express their concern but are bound by the case law. It is for these reasons that I feel that proposed amendment would be beneficial to the administration of justice and would lead to more tranquility in the community.

Elmer J. MacDonald Chief Prosecuting Officer
the Law Courts

1815 Upper Water St. Halifax NS.

Then, honourable senators, this one says:

In reply to your inquiry we are firmly of the belief that paragraph 9 of Bill C-71 amending section 171 of the Code is absolutely essential to the maintenance of law and order in public places.

We rely upon the good judgment of our police in many areas of the criminal law and we submit their judgments should be judicially acceptable in determining when a public disturbance has taken place.

Wendall Mackay

Deputy Minister

Department of Justice

PEI

Then the following is from Newfoundland:

This will confirm that this province desires the amendment to this section contained in Bill C-71. I

might point out, however, that while we are having no problems with the section we would prefer the amendment as approved by the uniform law conference and for the reasons given by the conference

Yours truly

Vincent P. McCarthy

Deputy Minister of Justice

Senator Langlois: Well, there is at least one province where we still have confidence in our police officers.

Mr. Christie: The next telegram is as follows:

Due to the problems which have been encountered in the prosecution of offences under section 171 of the Criminal Code the Ministry of the Attorney General for Ontario would ask that everything possible be done to ensure that the proposed amendments of that section contained in Bill-C71 be passed C M Powell Ministry of the Attorney General.

The next one reads:

Re section 171 of the Criminal Code in Saskatchewan we have difficulty in prosecuting under the above section in that we have to call significant representation from the public to testify that there was a disturbance. This causes expense and needless inconvenience to the witnesses but worst of all makes the law appear to be absurd in the eyes of the public. If police testimony proves a disturbing set of events and establishes the presence of the public surely a disturbance has been proven. It is our position that your suggested amendment to section 171 would be significant improvement in our law.

Serge Kujawa Director of Policy and Planning (Criminal Justice)

Then this is the last one, Mr. Chairman, and it comes from Alberta. It is as follows:

Alberta supports the resolution re amendments to section 171 of the Criminal Code as passed by the Uniformity Commissioners in 1973 at Victoria B.C.

William Henkel, Asst Deputy Attorney General.

Senator Smith (Colchester): I have not so much a question as a comment, but that comment will be along similar lines to that I made last week, with the addition that these are all from prosecutors and present the point of view of prosecutors. I do not see any telegrams from presidents of bar societies, or any indication of seeking the opinion of those prominent in defence activities. In my opinion, these telegrams remain completely unconvincing. Indeed, some of the very words in the answers bear out the argument I made last week, that it is simply a case of making it a little easier for the Crown to prove its case. Surely the words of the Saskatchewan telegram, reciting certain events and saying surely the disturbance has been proven, are correct. Certainly it is. If the courts are making these mistakes of which people complain, is there any indication that appeals have been taken to higher courts? Are there any cases, other than the one cited the other day from British Columbia? I admit that I speak probably from the defence point of view, because I have only conducted one prosecution in my life, but this seems to me to be an effort to make things a little easier for the Crown to prove its case and a little harder for the innocent man to take advantage of the rule of reasonable doubt and the presumption of innocence.

In my opinion, there is no doubt in the world that a court can infer from the testimony of a police officer that certain events have occurred and can infer from that that a disturbance has occurred. Using the illustration contained in one of the telegrams, I believe that of the Province of Saskatchewan, it is perfectly clear, I submit, that if those circumstances were all proven to the satisfaction of the court, the court would have to convict. The British Columbia case which was cited last week surely only indicated that the appeal court found that the Crown had not proved the circumstances. It did not say that the evidence of the police could not be accepted, or that the evidence of the police, if it had been sufficiently detailed and had proved the circumstances, would not have been sufficient. Really, I just feel that it is a case of making an unnecessary and, in my opinion, objectionable change in the law to meet some dissatisfaction in the case of certain individual prosecutions which have not really been tested in the courts.

If the courts of the land, generally speaking, were declaring that they could not accept the evidence of a police officer alone and must have the evidence of someone else, then I could see some justification or argument for the proposed amendment. However, that is not what is being declared at all. As far as I can tell, it is simply an attempt to get rid of the necessity of appealing when a court finds that the Crown has not sufficiently proven its case. In my opinion, Parliament is not to be used in that manner, nor should it be attempted to improve the Criminal Code by such legislation. With all due respect to the very distinguished gentlemen who placed this before us and the equally distinguished gentlemen who wrote these telegrams, I am completely unconvinced that this is either necessary law or good law.

Senator Laird: Mr. Chairman, I have had some experience as defence counsel, also, in my day and I must say with great respect for a very able senator that I cannot go along with Senator Smith. One must always take the point of view that when we frame laws in Ottawa we do it, I hope, in an objective manner. Even though my instincts as a defence counsel, in my day, go along with Senator Smith's argument, in fact I believe that for the general good of the public I can well understand why this is needed. It is true that these opinions are from one side only, but we encounter the same type of attitude as, for example, we experienced on the part of defence counsel during our study of marihuana. Had they had their way, you may recall, Mr. Chairman, we would have ended up with a rather toothless bill. In this case, experience being realistic, shows a situation such as certainly exists in my city of Windsor, where circumstances do arise in which it is extremely difficult to obtain corroboration of the evidence of police officers. I have the greatest respect for our courts and, believe me, I would suggest that any judge hearing only the evidence of a peace officer, having any reasonable doubt as to its accuracy, would resolve it in favour of the accused. Therefore, in my opinion this is a good amendment.

Senator Croll: Mr. Chairman, I have one question. Did representatives of the law society not appear before the committee of the other place to offer their opinion in this respect?

Mr. Christie: No, not with respect to this particular clause.

Senator Croll: Did they appear at all?

Mr. Christie: Not with respect to this particular clause; there were witnesses before the committee of the other place.

Senator Croll: And they had the bill before them?

Mr. Christie: Oh, yes.

Senator Croll: But they had nothing to say regarding this particular clause?

Mr. Christie: No.

Senator Croll: But they had an opportunity to comment, if they had something to say?

Mr. Christie: Exactly.

Senator Croll: I have spent my life on the defence side; the only prosecution I ever took part in was to do with drugs, on behalf of the government in the early days, and it was very useful, because there was no legal aid at that time and one had to make a living. However, it appears to me that if ten attorneys general came to me and stated that they agreed on this and if I thought it was the most outrageous, craziest thing in the world, I would re-examine my position very carefully to find out what they had said in unison.

Senator Flynn: What conclusion would you come to?

Senator Croll: I will tell you. To the very conclusion I come to now, that these people who are on the scene, who have to deal with the matter, are saying, "This is a good section." I felt that long before they made their views known here, because I think I know something of the problem that is faced, particularly in the larger cities, with groups who fade and disappear the moment a policeman makes an arrest. It is very unfortunate. It should not be that way. It would be a great mistake if we did anything at all with that section other than pass it.

Senator Flynn: May I ask a question of Mr. Christie? Mr. Christie, you referred to the recommendation of the commission on the uniformity of laws. Would you read the recommendation as it was made? It seems to me that one telegram suggested they would have preferred the wording of the recommendation of the commission.

Mr. Christie: Senator Flynn, you are asking for the precise recommendation that was made to the commissioners?

Senator Flynn: No; of the commissioners.

Mr. Christie: It does not change anything. I could get it for you within 20 minutes, if necessary. What happens is that an item is put on the agenda for the meeting of the uniformity commissioners. I was not at the 1973 meeting, but I have been at many others and I know what I am saying. The item would read something along the following lines. Section 171, causing disturbance in a public place. Suggested change in the law. Supporting material. You then go over to the supporting material, and the supporting material was the letter which I received from the then public prosecutor for the city of Vancouver, plus—he included this in his letter—a copy of the judgment in the *Eyre* case, which was referred to the other day. The commissioners will hear the story, as do honourable senators; they will hear the arguments, but they do not draft. We draft. They take the item and the supporting material, and they say it should be amended to accommodate this. Then

we draft. The wording you find in clause 9 is the creation of the Department of Justice here in Ottawa.

Senator Flynn: Are you happy to claim that?

Mr. Christie: Well, I am not disowning it.

Senator Flynn: My point, Mr. Chairman, is that it is based on the Vancouver case.

Mr. Christie: No.

Senator Flynn: You say the recommendation was based on that special case which you mentioned the other day. I would say, having listened to the report you have given us, that in this case the charge should have been something else, because that person was not part of the disturbance. He was there, and because the police officer told him to go into the house and he resisted, they said, "This is not evidence of having caused a disturbance." But there could have been another charge, of resisting a police officer, or something like that. I do not think, if you want to obtain a conviction under section 171 in that particular case, that you are doing something that is correct. The amendment will not cure anything in this particular case.

Mr. Christie: With all due respect, senator, one thing should be clearly understood: all that the letter from the public prosecutor in Vancouver did was lead to the fact situation where the item was placed on the agenda...

Senator Flynn: I know; I understand that.

Mr. Christie:—for the consideration of the commissioners. That is a national body. I have explained who were there. The decision would not necessarily revolve around what the then prosecutor and now judge, McMorran, said. All his letter did was to precipitate a discussion; that is all.

Senator Flynn: I realize that. I agree with you.

Mr. Christie: We then get a reaction from Newfoundland to Victoria on whether or not section 171, in the light of their experience, requires a change.

Senator Flynn: I agree with you. My point now is that it started from that case, and I do not think it is a good case in itself. The second point I draw from the evidence you have submitted is that the police officer is sometimes unable to say that there was a public disturbance, because he arrives after the disturbance has subsided and those who were witnesses cannot be found. He could bring some hearsay evidence for the disturbance, and the court may not accept it.

If that is your problem, it seems to me that you are not doing anything to correct it. If you want hearsay evidence from the police officer to be accepted in a case like that, you might as well be frank and put it right there and then in the text. You say:

a summary conviction court may infer from the evidence of a peace officer...

He can already do that. There is no doubt about that. The court may:

infer from the evidence of a peace officer relating to the conduct of a person or persons, whether ascertained or not, that a disturbance... was caused...

But the participation of the accused in that disturbance is something else. That was the problem in Vancouver and it will remain a problem even if we pass the amendment, which appears to me so naïve, because we are saying

something that is very elementary which any judge should be able to understand. If we appoint judges who cannot understand that, it is about time we did something about the appointment of judges. And we would have to do that in practically every section of the Criminal Code. I do not see why we should single out section 171 to tell the judge that he can infer from the evidence a conclusion. If he does not understand that, he does not deserve to be on the bench and should not be there.

Mr. Christie: Senator, please, let me emphasize this—I think it is of the utmost importance in the light of the remarks you have just made—that there is not the slightest suggestion in clause 9 that the rule against the admissibility of hearsay evidence in criminal cases is to be violated.

Senator Flynn: I did not say that.

Mr. Christie: I am sorry, senator, I...

Senator Flynn: I said that if you wanted to correct the problem and you wanted the evidence of a police officer relating to what has been told to him to be accepted, you would have to say, "Accept hearsay evidence from a police officer." As it is now, it does not cure your problem and does not do anything other than say you may accept evidence. That is obvious. A judge can accept any evidence. It is up to him to understand that. If he does not, again I say he should not be on the bench; and this rule, if it has any value, should not be under section 171 but should be put somewhere in the Code. It would seem to indicate that judges are ignorant people.

Senator Croll: Mr. Chairman, if I recall, the wire from Manitoba gave instances of police officers who on two occasions were on the job, but were unable to obtain a conviction although they saw what happened and they were there when the incident happened. They refused to take the police officers' word for it. Surely this will correct that situation?

Some Hon. Senators: No.

Senator Smith (Colchester): It will not correct it at all.

Senator Flynn: Certainly not. Your objective—and I am not saying I support it—could be achieved by substituting the word "must" for the word "may".

Senator Croll: You could not use the word "must".

Mr. Christie: Senator Flynn, you know as well as I do from your experience before our courts that there are many situations that can arise in the course of even simple trials, that to say the judge must accept this or must...

Senator Flynn: I am not suggesting that. I am simply putting it forward as the only way of achieving your purpose. As it is, it is entirely useless.

Senator Buckwold: Mr. Charmain, I cannot speak as a lawyer, as I sometimes say in this committee...

The Chairman: You are always boasting of that, Senator Buckwold!

Senator Buckwold:—but I can speak from a long experience as a mayor of a medium-sized community in which disturbances and the difficulty in acquiring convictions, or even prosecutions in connection with such disturbances, was something of very real concern. Hardly a week would go by that I would not be involved in a discussion with someone about this problem.

I would have to agree with Senator Flynn that this is not the whole answer. However, it is a step in the right direction, and I support it as such. It will make it a little easier, if that is the right word, for police to get a conviction, and, of more importance, it will encourage the police to prosecute. As it is now, the police simply say they cannot do anything about it, and then the whole neighbourhood telephones the mayor demanding to know what he is going to do about "these hoodlums, these punks, who are raising heck about town." The police themselves just throw their hands up on many occasions because of the difficulties in acquiring convictions, as expressed by the attorneys general. While I agree that it is not the whole answer and that it will still be difficult to get convictions, it is, nevertheless, one step that will assist in alleviating this very serious problem.

Senator Flynn: Can you be more explicit as to how this amendment will help?

Senator Buckwold: I can only say that the courts will put some additional emphasis on the evidence of the police officers, which very often in the past was negative.

The Chairman: Senator Croll asked a question about the proceedings in the committee of the other place, and I see that this clause was passed without any discussion.

Senator Flynn: That explains the situation.

Senator Croll: The attorneys general were unanimous and the committee of the other place was unanimous. What are we talking about?

Mr. Christie: Mr. Chairman, I just want to make the point that, as the chairman has pointed out, this clause was not a contentious issue in the committee of the other place. Therefore, the benefit of what I have put on the record today in relation to the views of the provinces was not before that committee.

Senator Smith (Colchester): Mr. Chairman, I should like to make one or two further observations. I do not think I am an unduly stubborn man—I may be unduly obtuse—but not a single word has been said here today which dealt, in my opinion, even in a modest way, with the points I raised.

I say again, if the courts of first instance have gone wrong—and apparently some of the people who replied to the telegram think they have—what evidence is there that anybody has made an effort to secure the verdict of an appeal court in relation to what happened in a lower court? After all, we cannot be expected to legislate to make sure that every subordinate judge always hands down the right decision. That is why we have appeal courts. I would have thought, if there were any appeal cases, other than the one we heard from British Columbia—which is, in my opinion, not at all supportive of the amendment—surely we would have heard of them by now. We have not.

With all deference to those who disagree with me, I say again that this, to me, seems like an effort to rescue the Crown from the necessity of proving an ordinary, good case; and no evidence to the contrary has been produced.

Of course, crown prosecutors want their task made easier. They would be delighted if they did not have to go to any trouble to prove their cases. It seems to me that one of the things that can lead most quickly to the diminution of all our rights and liberties is just this kind of thing.

If we had a situation here where the evidence was that the higher courts had said what these lower courts are alleged to have said, and we had some evidence before us that this was becoming a difficult matter in the country, something that the courts could not cure, then I might take a different view altogether. However, we do not have a single appeal case before us, other than the one from British Columbia.

With all due deference, although I was never a member of the uniformity commission, I know how things happen in those meetings. I have had many personal reports from the representatives of my province to those meetings. The members of that commission are just like the rest of us: they are wrong sometimes; and they are right sometimes.

The fact that the uniformity commission came to a decision on the evidence which was before it does not lead me to the conclusion that I have to accept what its decision was without examining that evidence. Otherwise, why bring it before us?

Senator Flynn: The one big fault with this amendment is that it gives more weight to the evidence of a police officer than to the evidence of any other witness. It singles out the evidence of a police officer for special weight.

Senator Laird: No, I cannot go along with that.

Senator Flynn: Why not? It states, "may infer from the evidence of a peace officer".

Senator Croll: The peace officer is enforcing the law.

Senator Flynn: Yes, but he is a witness like any other witness. I have pleaded many civil cases involving the testimony of police officers, and too often the courts give more attention to the evidence of a police officer simply because he is a police officer. I disagree with that. I do not think the Criminal Code should give more importance or more weight to the evidence given by a police officer than to the evidence given by any other witness, or single out the evidence of a police officer.

Senator Laird: Believe me, I go along with that. What I am saying is that the wording of this section does not give that evidence special weight.

Senator Flynn: It does not say that about the evidence given by any other witness. Why?

Senator Croll: Because the charge is laid by the police officer.

Senator Flynn: That is worse.

Senator Croll: No, it is not worse. No one else can lay the charge, or does lay it.

Senator Laird: Any judge who fails to take into account, and apply, the doctrine of reasonable doubt is remiss in his or her duty. I rely on our judges, and I would certainly rely on them not, in their view of the wording of this amendment, to give any undue credence to the word of the peace officer. If he is doing his job at all as a judge, he will appraise that evidence...

Senator Flynn: You are contradicting yourself. You say, first of all, that this clause is necessary because the judges do not understand; and now you are saying you rely on the judges to apply this provision...

Senator Laird: No, I did not say that.

Senator Flynn: That is what you intimated.

Senator Laird: No. I think our courts, as a whole, are very competently manned by our judges, and I rely on our judges to do their duty.

Senator Flynn: Obviously, the crown prosecutors feel the judges do not understand. That is the gist of those ten replies.

The Chairman: Honourable senators, this clause carried when we first considered it, but was re-opened for discussion at the request of honourable senators. I will now ask again whether clause 9 carries.

Hon. Senators: Carried.

Senator Flynn: I move that it be deleted.

Senator Laird: We will have to have a show of hands.

The Chairman: Senator Flynn moves that the clause be deleted. All those in favour of Senator Flynn's motion? All those opposed? On a show of hands, I declare the motion lost by a vote of five to three. The clause shall carry.

Senator Langlois: Mr. Chairman, before we pass to another clause, what about the French translation?

The Chairman: The word "indéterminée" as a translation of "whether ascertained or not"?

Senator Langlois: Yes. Could that be dealt with on this clause?

Senator Flynn: Même «non-identifiée».

Senator Croll: I understand Senator Robichaud has to get away. Can we hear his views?

The Chairman: On what, Senator Robichaud?

Senator Robichaud: It was not on this point but on "absence non-justifiée".

The Chairman: We are going to deal with that. I do not know whether we will do so this afternoon.

Senator Croll: Could we deal with that to accommodate Senator Robichaud?

The Chairman: If we are going to leave clause 9 for a third discussion...

Senator Croll: There is nothing further on clause 9.

The Chairman: Yes. Senator Langlois raised the question of the language. It will take only a moment. Did you have anything to add to this, Mr. Sommerfeld, on what we said the other day about the translation of "whether ascertained or not"? It is translated as "même indéterminée." Senator Langlois questioned that translation; Senator Flynn does too, and so does Senator Robichaud. Do you have any suggestion to make?

Senator Flynn: "Non identifiée, même non identifiée; it means that he is not identified, or "even not identified."

Senator Langlois: Referring to the person?

Senator Flynn: Yes, "even not identified".

The Chairman: You notice it is "une personne" and "indéterminée", which is feminine; it refers to "personne".

Senator Flynn: "Whether ascertained or not."

Senator Langlois: I was told it referred to the disturbance, and disturbance is translated by "comportement" in French, which is masculine, not feminine.

The Chairman: I think it is "persons."

Senator Flynn: It comes right after "persons" in the English also. It is, "persons, whether ascertained or not." It refers to persons.

Senator Langlois: Why not say, "identifiée ou non."

Senator Flynn: C'est ça. That is what I suggested.

Senator Langlois: "Identifiée ou non."

Senator Flynn: "Même non identifiée."

Senator Croll: What would be the effect?

Senator Flynn: It would be "even if not identified."

Senator Langlois: The same as in the French.

Senator Croll: What are you trying to correct?

Senator Flynn: "Even if undetermined." In French you would say "even if not identified."

Senator Langlois: It is an improvement in the translation; it is not an amendment.

Senator Flynn: It might be an amendment, but it does not matter.

Senator Croll: It does not make any difference.

Senator Laird: I would agree, from my little knowledge of the other language, that this would be a sensible change.

Senator Flynn: "Même non identifiée."

The Chairman: Mr. Christie tells me that the Department of Justice translators will argue with that.

Senator Langlois: I will argue with them at any time. They are so bad, I don't mind that.

Senator Flynn: Let us say that we are going to suggest that, and you can let us know whether they argue with it.

Mr. Christie: Mr. Chairman, do you anticipate that we will have another session?

The Chairman: Yes, we will have to.

Mr. Christie: Would it satisfy you, honourable senators, if we went back to our translators and then reported to you in writing on that point?

Senator Flynn: Very good.

The Chairman: Senator Robichaud, you wanted to talk about "Absconding Accused," and the French translation. That is clauses 39, 59 and 76. "Abscond" is translated as "absence", which is wrong.

Senator Laird: It sure is.

Senator Langlois: I objected to that myself.

The Chairman: What do you have to suggest, Senator Robichaud?

Senator Robichaud: "Absence non justifiée."

Senator Flynn: I agree with that.

Senator Langlois: It is much better.

Senator Flynn: "Unjustified absence."

The Chairman: Mr. du Plessis has a translation here. Would you read it, please?

Senator Laird: Before he does that, did anybody look this up in the French-English dictionary? There is *Larousse*, or I prefer the new one, *Le Dictionnaire Français*. That is a fairly new one put out in Quebec.

The Chairman: I think you will find this satisfactory, "s'enfuir secrètement".

Senator Flynn: He may not have gone very far; he is not appearing, and he has no reason for not appearing.

Senator Langlois: He might be in the court house but not in the court room. It is not "fuite".

Senator Flynn: "Fuite" is going much too far, as far as I am concerned.

Senator Langlois: He is not present where he should be.

Senator Flynn: I do not mind, but it will make it much more difficult for the prosecution. Whereas "absence non-justifiée" would mean that he does not appear and has not given any reason, either to his lawyer or to anyone else. He was called to appear, but there is nobody who can explain his absence; then he is deemed to have absconded. Whereas "fuite" means that he has gone away but you do not know if he has gone away; there is no presumption from his non-appearance that he has left, that he has gone away.

Mr. R. L. du Plessis, Acting Law Clerk and Parliamentary Counsel: You could use the same reasoning, could you not, for the English word "abscond"?

Senator Flynn: It means "absence, unjustified absence".

Mr. du Plessis: Perhaps we should start with the English word "abscond" and get the true meaning of the word in English and then see how the French word applies.

Senator Langlois: Have you the *Harrap's Standard French and English Dictionary*?

Senator Laird: I have just sent out for the dictionary.

The Chairman: I believe Mr. du Plessis has the correct meaning. What is the dictionary meaning of the word "abscond", Mr. du Plessis?

Mr. du Plessis: The first meaning is, "to hide away," but that is considered obsolete or archaic. The second meaning is, "to hide oneself, to go away hurriedly and secretly".

Senator Buckwold: You do not have to take anything with you.

The Chairman: That is why I say "secrètement" is a literal translation of that.

Senator Flynn: "Secrètement"? Anyway, not very long ago I was listening to a TV program where the accused did not appear at trial and they used the word "absconding" because he had not given any explanation or any justification for his absence. They used the word in that sense. In the courts anyway, the legal meaning is "absconding". I think that is correct. In French I do not think there is any equivalent except really "absence non justifiée".

Mr. du Plessis: Incidentally, I believe there was a check made to see if in the French text of the Criminal Code this word appears elsewhere, and I believe it does.

Senator Flynn: Which word?

Mr. du Plessis: The word "fuir".

Senator Laird: Mr. Chairman, could I read into the record the translation of "abscond" in *Harrap's Standard French and English Dictionary*?

The Chairman: Yes.

Senator Laird: "Abscond"—se soustraire à la justice; s'enfuir; s'évader; décamper; filer".

Senator Flynn: "Se soustraire à la justice". That does not necessarily mean "to evade".

The Chairman: "Senfuir" is a term we can use.

Senator Flynn: The mere fact he does not appear does not mean he has gone away; he is simply not appearing and has given no reason to anyone.

Senator Robichaud: Mr. Chairman, I have to go to another meeting. However, I agree with Senator Flynn that the translation of "absence non justifiée" covers everything. If you have "fuite d'un prévenu", I think that is coming very close to it. "Fuite" in French has another meaning. "Fuite" is a leak from a pipe line or even a pipe; that is a "fuite".

Senator Flynn: It is "fleeing". "Fleeing" is the translation of "fuite". It means he is running away, and I do not think that is what you have in mind.

The Chairman: I hope we do not have to wait until the French Academy reaches "E" or "F" in its dictionary.

Senator Robichaud: Before I leave, Mr. Chairman, I would state that I subscribe to the translation of "absence non justifiée". I think it covers all cases, not just one case; it covers all cases. I do not think one case will not be covered by that translation.

Senator Langlois: I also agree with that.

The Chairman: We will refer it back through our witnesses to the translators.

Mr. Christie: Mr. Chairman, you raise a rather awkward point because this document is the product, as I understand it, of the translators of the Department of Justice. Therefore, asking me to refer it back to them is asking me simply to take back to them what they have already sent forward as their considered opinion as to what the correct translation of the clause in question is. I do not think that is going to advance the work of this committee or of the Department of Justice, or anyone else.

Senator Flynn: Mr. Chairman, if we ask Mr. Christie to convey to the translators of the Department of Justice the opinion of three French-speaking senators here saying that they would replace the word "fuite" by "absence non justifiée" what would their reaction be?

Mr. Christie: If that is the wish of this committee, I will certainly be glad to do that.

Senator Flynn: Yes.

Senator Laird: I would certainly like to see it done.

Mr. Christie: If that is the wish of the committee, all right.

The Chairman: We will rely on you to do that, Mr. Christie.

I am still going to hold "Drinking and Driving Offences" until Senator Asselin is present.

Senator Flynn: Until 5 o'clock.

The Chairman: We will also hold "Credit Card" until Senator Neiman is here.

Senator Langlois: Is this an invitation to go to your room after we adjourn?

Senator Croll: Mr. Chairman, it may be that some of us will not be here for the "credit card" or the "drunken driving" clauses. Would it not be better to have open discussion on it so that we may offer some contribution?

The Chairman: When the committee adjourns today, Senator Croll, it will adjourn until Thursday morning at 9.30.

Senator Croll: On Thursday morning you have other committees and some of us may not be here. I am rather interested in the "credit card" clauses. Could we just have a discussion without resolving the matter?

The Chairman: We had a discussion when you were not here and Senator Neiman stated she had an amendment which she is drafting.

Senator Croll: All right, I will leave it.

Senator Langlois: Do I understand that clause 9 is now standing for a third time?

The Chairman: No, clause 9 has been adopted.

Senator Langlois: We will be coming back to it for the French?

The Chairman: Yes.

Senator Croll: On the "credit card" matter, if there is an amendment, I have no objection to holding it for Senator Neiman. I didn't know about that.

The Chairman: Dealing with the matter of "Absconding Accused," clauses 39, 59 and 76 were carried subject to the French translation.

We now come to "Bail Reform Act," which we held at Senator Croll's request, and those are clauses 47(1), 47(3), 47(4), 47(5), 47(6), 50, 51, 52, 53, 55(3) to 55(6), 56, 57 and 73.

Mr. Christie: You will appreciate that these are a very significant series of changes to the existing law in relation to bail.

The key clause in the series is subclause 47(3) which amends in a very significant way section 457 of the Criminal Code, which together with section 457.7 of the Criminal Code contains the key provisions pertaining to judicial interim release of accused persons.

I will concentrate my remarks on section 457 because once that section and the amendments proposed to it have been considered, section 457.7, which is covered by clause 53, can be dealt with quite expeditiously because, in essence, they simply incorporate what pertains to section 457, a relatively few although important designated offences. In section 457.7 reference is made to certain forms

of treason: assisting enemy aliens to leave Canada; intimidating the Parliament or a legislature; sabotage; inciting armed forces to mutiny; the hijacking of aircraft; the doing of acts endangering the safety of aircraft which are in flight, or rendering an aircraft incapable of being put into flight; taking of offensive weapons or explosive substances on board civil aircraft; murder and conspiracy to commit murder.

I will revert to the proposed amendments to section 457. If honourable senators will look at section 457 they will note that under that section an accused, under present law, is entitled to be released—and I now quote from section 457(1):

... unless the prosecutor, ... shows cause why the detention of the accused in custody is justified ...

That is where the onus lies today. If a justice should decide to release an accused under existing law, but the prosecution—and again the onus rests on the prosecution—satisfies the justice that he should prescribe conditions pertaining to the release, the justice may do so under section 457. These conditions have already been mentioned at an earlier session of this committee, but I will just refer to them again briefly because I think they are important in the context. They are to be found in section 457(4). They include such things as that the justice may direct the accused to report at times to be stated, or to remain within the territorial jurisdiction, or to notify a peace officer of a change of address, and so on. Then there is the final, what I call the basket clause; “comply with such other reasonable conditions specified in the order as the justice considers desirable.”

Clause 47(3), which I have already described as the key clause, proposes that from now on the accused, instead of the prosecutor, shall have the burden to show—and I am quoting—“cause why his detention in custody is not justified, ...” This rule, subject to what I will say in a few minutes about section 457.7 shall apply to these four classes of cases: first, where the accused is charged with an indictable offence that is alleged to have been committed while he was at large awaiting trial for another indictable offence; second, where a person who is charged with an indictable offence is not ordinarily resident in Canada; third, where a person who is at large pursuant to an undertaking, recognizance, summons, appearance, notice or promise to appear—which are all of the various vehicles by which he can gain pre-trial release—violates the provisions thereof; and finally, the fourth class of persons, those who are charged with trafficking, being in possession for the purpose of trafficking, or importing narcotics in violation of sections 4 or 5 the Narcotics Control Act.

Under section 457.7, which is a companion section to the earlier one, which is the section which deals with those serious offences I have already mentioned, only a judge of the superior court of criminal jurisdiction can order the release of the criminal. The proposal is that, in relation to the offences described in section 457.7, “where the person is not a resident of Canada or has committed an offence while he is at large” and so on, that will apply to that series of offences. In addition, the onus will be on the accused in any case involving murder or the offence of conspiring to commit murder. This last provision was added by way of amendment when the bill was before the Standing Committee on Justice and Legal Affairs in the other place.

In the event that an accused is enabled to show cause why his detention is not justified, he is entitled to be

released. He may, however, be required to enter into a recognizance and be subject to the kinds of terms and conditions that I have already described.

That, Mr. Chairman, is the first half of what I would describe as the key amendment to the bail provisions. There is another half but, if you, sir, think this is an appropriate time for me to be questioned in relation to this half, I am quite prepared to answer questions now. Otherwise, I am also prepared to go ahead.

Senator Croll: What was the amendment which was added in the other place? Can you relate that again, please?

Mr. Christie: There were two amendments added in the other place. The onus shifted on to an accused to justify his release when he was charged with trafficking, being in possession for the purpose of trafficking or importing narcotics contrary to the Narcotic Control Act; or, if he was charged with murder or conspiracy to commit murder. The onus shifted in those cases.

Senators Smith (Colchester): Mr. Chairman, I wonder if the witness could enumerate again those cases in which the application can only be heard by a judge.

Mr. Christie: Of a superior court of criminal jurisdiction?

Senator Smith (Colchester): Yes.

Mr. Christie: Certain forms of treason—and I can give you the section numbers if they are important to you, sir.

Senator Smith (Colchester): No, that is all right.

Mr. Christie: Certain forms of treason: assisting enemy aliens to leave Canada; intimidating Parliament or legislatures; sabotage; inciting armed forces to mutiny; hijacking of aircraft; doing acts endangering the safety of aircraft in flight, or rendering an aircraft incapable of being put into flight; taking offensive weapons or explosive substances on board civil aircraft; and murder or conspiracy to commit murder.

Senator Smith (Colchester): Thank you very much.

Senator Croll: And previously a lower court could have dealt with which ones? Certainly not with murder.

Mr. Christie: No. The offences in the series that I have just given to you were always included; but there is a new feature as far as murder and conspiracy to commit murder are concerned, and that is that the onus shifts there.

Senator Croll: That is a new one under this amendment.

Mr. Christie: It is (d.1), on page 36. That is a provision regarding the shifting of onus that has been added. It was added, as I pointed out, I think, before the House of Commons Standing Committee on Justice and Legal Affairs.

Senator Croll: Why? Because of the argument that bail was too easily given in murder cases?

Mr. Christie: I think the fundamental essence of the argument was simply this, that a person who is charged with murder or conspiracy to commit murder should bear the onus of proving that he is a person who should be at large.

Senator Laird: That makes sense.

Senator Croll: One thing that troubled me in that respect was a case reported in a Toronto paper, that was widely reported, of a man who is out on bail, awaiting trial for murder. He is a bartender. He gets into a rumpus, walks over to his room in the hotel, picks up a gun and comes out and murders another man. What troubled me was this provision which says:

(f) comply with such other reasonable conditions specified in the Order as the Justice considers desirable.

I would have thought that that section would have covered a pretty wide range of things that could be imposed upon a man who is permitted out on bail on a charge of murder, such as not having weapons, or at least providing for some sort of inspection.

Mr. Christie: Well, senator, as I pointed out earlier, under section 457(4) a Justice who releases a person can make him subject to a whole series of conditions, and that carries over to section 457.7 (2) . . .

.... with such conditions described in sub-section 457(4) as the judge considers desirable;

What Code are you working from, senator?

Senator Croll: Martin.

Mr. Christie: Is that the 1975 edition? Take a look at Martin, section 457.7(2), and you will see how they incorporate section 457(4).

Senator Croll: Yes, I saw that section.

Senator Laird: But that still, of course, does not derogate from the proposition that the bill provides for a complete shift of onus.

Senator Flynn: That is the main thing.

Mr. Christie: Yes, right.

Senator Flynn: The judge in your case, Senator Croll, could have forbidden the accused, while out on bail, to carry a weapon, or to have one in his house.

Senator Croll: The granting of bail for murder is something new within the last ten years. Previous to that you just could not get it. I agree that it is quite all right, and that the onus would be there. It appears to me, however, that it is not enough to obtain from him a written agreement saying, "You shall do this, and this, and this, while you are on bail". On matters as important as this somebody should be required to involve themselves in the situation, whether it be a parole officer, or someone else, who could see that the conditions in question are carried out. For instance, take a man, whoever he may be, who is charged with murder, the evidence may be slight, and there may not be enough of it, I do not know; but the charge itself is important. In the case I quoted the man is working as a bartender. Well, he could probably be a good union man and a good bartender and all that, but the situation lends itself to the setting up of some sort of system of inspection. Someone should involve himself in a situation where the charge is as serious as that, who could see that the man conducts himself in the way the judge expects. Here, obviously, no one did.

Mr. Christie: Senator, it is extremely difficult, and I am sure you will appreciate this, for me or Mr. Sommerfeld to comment on particular cases, particularly when we have

had no opportunity whatever to examine the facts in detail.

Senator Croll: I do not want any comment from you at all. I have made a statement the record. I do not expect you to comment on it. What I am pointing out is that the laws governing bail, despite the fact that we have attempted to do a great deal to improve them, are in great disrepute in the country. You do not have to comment on this. It is a matter of knowledge. I think it is a pretty good bail law myself.

Senator Laird: The present one?

Senator Croll: With the amendments. I think this bill will make a good law. For some reason or another, however, it has that sort of reputation, and it is going to be hard to overcome it.

Senator Laird: By the shift of onus.

Senator Croll: Even before the shift of onus we found men who were out on bail on Monday were back in court on Tuesday, and out again and back in court on Thursday. They were handing out bail two and three times, and it became public knowledge. All right, the onus will make some difference, I agree; but they were jumping out on bail as fast as the people who were being deported by immigration officers, and who were back here before the immigration officers got back themselves.

The Chairman: That is the reason for this bill, is it not?

Senator Flynn: Senator Croll is saying that it does not cover the point that he has mentioned, probably because the judge should have ordered the police to keep an eye on the accused continuously.

Senator Croll: Murder is a serious charge.

The Chairman: It needs some supervision.

Are there any other questions? Do the clauses carry?

Hon. Senators: Carried.

Senator Croll: Let me give you another instance of bail that happened last week. A 16-year-old boy had been charged with some sort of offence. The magistrate set bail at \$1.00. The boy did not have a dollar. They put him in one of the cells, and he was sexually assaulted. This is a 16-year-old boy. It seems to me that something is lacking in our bail law when the judge who indicated that it was a formality would not have at least inquired as to whether the boy did in fact have a dollar. Surely there must have been a police officer who had a dollar, or a lawyer, or somebody who had a dollar. Certainly in my day in court nobody would have walked away from many of these people, but here we are with a total disregard for people's rights. The judge will say, "Oh, I gave him bail." Certainly he gave him bail, but this was a 16-year-old boy, and no one in the court rose up to hand out one dollar to see that the boy got home. He wound up in jail for the first time and was sexually assaulted in there. Who knows what the effects will be upon this boy? Yet the judge no doubt thinks he has done his duty. In my view, however, not only did the judge not do his duty; neither did the policemen and the lawyers who were present.

The Chairman: That case, senator, which I read with interest, was a commentary on the boy's parents. They produced the dollar for bail after he had been assaulted.

Senator Croll: They threw him in for a dollar. But when we talk of bail, the public gets the idea that this is the way we handle bail.

Senator Laird: But you cannot legislate against that sort of conduct.

Senator Croll: Oh, no, you certainly do legislate to cover this type of situation.

Senator Flynn: Should we tell the judge how to regard the evidence? We cannot tell the judge what he should do with a boy of 16. We would have an amendment especially for boys of 16.

The Chairman: The clauses have been carried, Senator Flynn.

Senator Flynn: I am not alluding to any other clause.

The Chairman: We now go on to clause 75 which is entitled here "Morgentaler Case, Provisions Re Appeals."

Senator Croll: Does Senator Flynn have any new views?

Senator Flynn: I shall try to have clearer views.

Mr. Christie: Mr. Chairman, under the existing law, section 605 of the Criminal Code, an attorney general, in a criminal case, is given the right of appeal on a question of law alone. Then the Code provides under subsection 613(4):

(4) Where an appeal is from an acquittal the court of appeal may

(a) dismiss the appeal; or

(b) Allow the appeal, set aside the verdict and

(i) enter a verdict of guilty with respect to the offence of which, in its opinion, the accused should have been found guilty but for the error in law, and pass a sentence that is warranted in law, or

(ii) order a new trial.

The proposed amendment included in clause 75 would restrict the right of the Court of Appeal under subparagraph (ii) "except where the verdict is that of a court composed of a judge and jury, enter a verdict of guilty—" In other words, if a court composed of a judge and jury enter a verdict of acquittal, a court of appeal will no longer have the authority to set aside the acquittal and enter a verdict of guilty and impose sentence. That is the substance of this amendment.

Senator Flynn: My first question is this, Mr. Christie: Is this amendment the result of the decision in the *Morgentaler* case?

Mr. Christie: That is correct.

Senator Flynn: And this discretion given the courts of appeal has not been used very frequently?

Mr. Christie: Indeed in the *Morgentaler* case at least two judges of the Supreme Court of Canada, Mr. Justice Pigeon and Chief Justice Laskin, indicated that the case was without precedent.

Senator Flynn: So this was the first instance that it was used, and so the amendment is directly the result of one case only?

Mr. Christie: I would say the *Morgentaler* case precipitated the amendment, yes.

Senator Flynn: Do you think it had been discussed before that case?

Mr. Christie: Not to my knowledge.

Senator Flynn: That is the point I wanted to put on the record first—that this is in fact the result of only one case.

Mr. Christie: But, as I say, senator, not to my personal knowledge.

Senator Flynn: Well, that is what chief Justice Laskin and Mr. Justice Pigeon said about it, and I think they are right.

The second point I want to put on the record in the case of *Morgentaler* is this: the accused was charged with an illegal abortion, and the facts were admitted—that is to say, that he performed the abortion without having received authority to do so from the therapeutic abortion committee of a recognized hospital. The accused himself admitted the facts and pleaded that he could rely on section 45 as a defence.

Mr. Christie: With all respect, senator, he raised two defences—a defence under section 45, and also he raised a defence of necessity in common law.

Senator Flynn: But that is about the same thing, I would think. In any event, I have no objection to this being added to my description of the facts. The judge of the superior court trying the case with the jury made an error in law, according to the Court of Appeal, and also according to the majority opinion of the Supreme Court of Canada, in saying that the defence of necessity was available to the accused.

Mr. Christie: My understanding of the case is that the Quebec Court of Appeal and the Supreme Court of Canada ruled out the possible defence under section 45, and the issue as to whether or not the defence of necessity is available is still open; and I understand that that is going to be the issue before the Supreme Court of Canada in "*Morgentaler* Case No. 2."

Senator Flynn: But by not retaining this defence of necessity in the first case, the Quebec Court of Appeal and the Supreme Court of Canada did not, in fact, say that this defence was available in the first case.

Mr. Christie: But in the second case.

Senator Flynn: Let us deal with the first case, first.

Mr. Christie: In the first case the Supreme Court of Canada ruled out section 45, as did the Court of Appeal in Quebec.

Senator Flynn: They said he had no defence.

Mr. Christie: In the first case, Mr. Justice Dickson—and I think four of his colleagues joined with him—discussed at great length, in his reasons for judgment, the issue as to whether the defence of necessity exists at all under our law.

Senator Flynn: So they dealt with it.

Mr. Christie: I think that will be the issue that will be before the Supreme Court of Canada in "*Morgentaler* No. 2."

Senator Flynn: In any event, these facts have been put on the record, and I do not mind your comments. In fact, I

thank you for them. If there had been no error in the instructions given by the first judge, and if, notwithstanding, let us say, proper instructions and the admission of the facts by the accused, a verdict of acquittal had resulted, would there be an appeal from a verdict of acquittal in those circumstances?

Mr. Christie: Senator, you will appreciate that you are asking me for . . .

Senator Flynn: —An interpretation of the law. I am not speaking of the facts.

Mr. Christie: No; with all due respect, sir, you are asking me to give you an interpretation of the law and you know that I am not in a position to do that, because any interpretation that I might suggest to this committee is binding neither on this committee nor on anyone else.

Senator Flynn: I know; I am not asking you for an opinion with respect to this particular case. In other words, I am asking you for your interpretation of the decisions and the interpretation of section 605, which allows an appeal from a verdict of acquittal only on a question of law. That is it, is it not?

Mr. Christie: That is correct.

Senator Flynn: If, in other words, the jury has before it facts that prove unequivocally the guilt of the accused and there is an equivalent of a refusal to apply the law, do you think the court of appeal could intervene? I am not thinking of the *Morgentaler* case, but just the general situation.

Mr. Christie: Again, with all due respect, senator, you are really asking me for a legal opinion.

Senator Flynn: Yes, but you probably know of many cases.

Mr. Christie: I can refer you to two cases in the Supreme Court of Canada, from which I infer no conclusions, but I will tell you in essence what they stated.

Senator Flynn: Yes, please.

Mr. Christie: The first one was *Sunbeam v. the Queen* (1969) 2 C.C.C. 189, which was a resale price maintenance case in the Supreme Court of Canada. Mr. Justice Ritchie quoted a statement made by Mr. Justice Schroeder, of the Ontario Court of Appeal, as follows:

It is not essential that a misconception of law should appear on the face of the judgment or the reasons therefor if the determination upon the evidence was such that, in the opinion of a reviewing Court, no person acting judicially and properly instructed as to the relevant principles of law could have reached. If that is readily apparent, as I believe it is here, then this Court is entitled to assume that some misconception of law is responsible for the decision.

When the case went to the Supreme Court of Canada, Mr. Justice Ritchie in effect reversed Mr. Justice Schroeder's statement, as follows:

In the present case the learned trial Judge accepted the evidence as contained in the letters above referred to and thus gave full effect to s. 41(2) of the Combines Investigation Act, but he concluded that this evidence was not sufficient to satisfy him beyond a reasonable doubt that the accused were guilty on the third and fourth counts. However wrong the Court of Appeal or this Court may think that he was in reaching this

conclusion, I am of the opinion, with all respect for those who hold a different view, that this error cannot be determined without passing judgment on the reasonableness of the verdict or the sufficiency of the evidence, . . .

I reiterate those words:

. . . or the sufficiency of the evidence, and in my view these are not matters over which the Court of Appeal has jurisdiction under s. 584(1) (a) of the Criminal Code.

That, of course, deals with appeals on questions of law. However, subsequent to the *Sunbeam* case the case of *Lampard v. the Queen* came before the Supreme Court of Canada in 1969. That was a wash trading case, and Mr. Justice Cartwright said at page 256, *Lampard v. The Queen* (1969) 3 C.C.C. 249:

In a criminal case (except in the rare cases in which a statutory provision places an onus upon the accused) it can sometimes be said as a matter of law that there is no evidence on which the Court can convict but never that there is no evidence on which it can acquit; there is always the rebuttable presumption of innocence.

So you can put those together yourself.

Senator Flynn: That brings out the point which I wish to make, that the question of law mentioned in section 605, on the whole, would refer only to an error by the judge, so to speak. If a jury misinterprets the law completely, and alone, without the assistance of the judge, comes to a conclusion and acquits the accused, the chances of having that verdict of acquittal changed or quashed—I do not mean changed, I am not referring so much to change at this time, but quashed—by an appeal court are extremely remote, according to the cases.

Mr. Christie: Let me put it this way, senator: As we have already noted two or three times, an attorney general can appeal from an acquittal on a question of law under section 605 of the Criminal Code.

Senator Flynn: That is right.

Mr. Christie: What is a question of law is an extremely difficult question to answer. As a matter of fact, if you were to work your way through the jurisprudence, even that of the Supreme Court of Canada alone, your head would be left spinning sometimes as to what really is a question of law.

Senator Flynn: Agreed.

Mr. Christie: So I cannot answer your question.

Senator Flynn: No.

Mr. Christie: It can be more than just a misdirection to a jury.

Senator Flynn: Yes.

Mr. Christie: It involves other factors. If you could prove that a jury had been corrupted and bought, I do not believe that an appeal court would have much trouble with that as a question of law.

Senator Flynn: You are saying exactly what I like you to say.

Senator Langlois: And what you like to hear.

Senator Flynn: What I like you to say and what I like to hear because, as you know, in some cases, especially today when everything is contested, the laws are tested and it would take only a few activists on a jury to, let us say, refuse to bring in a verdict of guilty because they are in disagreement with the law.

Mr. Christie: I cannot answer that question, senator.

Senator Flynn: I know, but don't you think that this problem was raised as much as the other problem with which we are attempting to deal now in the *Morgentaler* case?

Mr. Christie: Not at all.

Senator Flynn: Well, "Not at all"; but that did not go through your mind, that possibly in a case such as that a jury would refuse to apply the law because there are many who are opposed to the present abortion laws?

Mr. Christie: No; "Morgentaler No. 1" . . .

Senator Flynn: I like this.

Mr. Christie: Well, we have to distinguish them, because there are two cases.

Senator Flynn: I know.

Mr. Christie: We can only distinguish them as "No. 1" and "No. 2," or maybe we could call them other names, but we stay with "No. 1" and "No. 2". "Morgentaler No. 1" was simply the misdirection . . .

Senator Flynn: Yes, I know.

Mr. Christie: And you know this as well as I, that if a judge misdirects a jury on a question of law, as he did vis-à-vis section 45, it is an error in law and there is a ground of appeal in favour of the attorney general.

In "Morgentaler No. 2" the argument before the Quebec Court of Appeal was that there was a misdirection on a question of law in relation to the defence of necessity. The Crown, in the right of the Province of Quebec, did not succeed; but, as I understand it, they are going on to the Supreme Court of Canada, and in due course we will benefit from that decision.

Senator Flynn: I would like to stay away as much as possible from *Morgentaler* cases No. 1 and No. 2. I suggest to you that when I saw this amendment I thought there was another problem, other than the question concerning an accused when the facts are admitted and the defence in law which he put is not available whether there was only the question of taking away from the appeal court the right to substitute a verdict of guilty for a verdict of acquittal; because, of course, on the other side no one objects to the court of appeal substituting a verdict of acquittal for a verdict of guilty when they find that it is unreasonable and not justified by the evidence.

My point is that there may be cases where you will not be able to obtain a verdict of guilty when all the facts are admitted, when there is no doubt about the evidence and there are simply one or two members of the jury influencing a bad decision. I suggest that this problem should have been looked into as well as the other on the occasion of the decision of the Supreme Court of Canada.

My second point is that we are saying here that we should never substitute a verdict of guilty for a verdict of

acquittal; that we should order a new trial. In this particular case, people have been saying that *Morgentaler* has been subjected to too many trials. Don't you think that if the facts are admitted, and if you do not want to have a repetition of trials, that at one point, where the problem is really only a question of law, the final word, if it has to be given to someone, should be given to the courts and not to the jury?

Mr. Christie: Of course, you are asking me, senator, about a question of high policy . . .

Senator Flynn: I am commenting more than anything else.

Mr. Christie: —and the policy of the government is reflected in clause 75.

Senator Flynn: In fact, these questions, Mr. Chairman, should be put to the minister.

Senator Croll: With regard to the question of necessity, was that not available under common law?

Mr. Christie: That is a very interesting point, senator. In "Morgentaler No. 1" he raised two defences: he raised section 45, and the common law defence of necessity. Both the Quebec Court of Appeal and the Supreme Court of Canada scrubbed section 45. They said it did not apply, just as a matter of statutory construction. The question of necessity was gone into by Mr. Justice Dickson, with whom four other judges concurred. He never answered the question in a definitive way. He traced the whole history of the common law defence of necessity, and as I read the judgment—I am just one lawyer and you may read it another way—he leaves the question open as to whether in the last analysis the defence really exists in this country.

We will presumably know the answer to that question after they have dealt with "Morgentaler No. 2. But Mr. Justice Dickson really did an exhaustive survey. He dealt with all the cases that we took when we were all at law school, about the boy in the rowboat and so on. He went through all that history. It was really an excellent judgment. Presumably the Supreme Court will let us know eventually.

Senator Flynn: If not on case No. 2, then perhaps on case No. 1 which will start over in a few months.

I suggest to you, Mr. Christie, that there may be cases after the second trial where it would appear necessary, even in the interests of justice, and possibly to put an end to an otherwise endless operation, for the court to step in and substitute a verdict of guilty for a verdict of acquittal. To my mind, it has not been used often enough to say that it is a bad law. This is only one case. This again is a question of policy, and I think I should stop questioning Mr. Christie, Mr. Chairman, and ask whether the minister will be coming to give us his views.

Senator Langlois: This is a decision from the court of last resort. It is only one case, but that is the court of last resort.

Senator Flynn: I am sustaining the decision of the court of last resort. I am not against it. The amendment would prevent a similar decision from being made in the future. That is the point.

Senator Laird: And you are afraid of the second time around?

Senator Flynn: Yes, certainly. If there is no exaggeration in the discretion given the court, I do not see why we should change the law just for one case. It seems to me that it is a very useful provision when the real question in the trial is a question of law.

Senator Croll: But you started out by telling us that it was very difficult to ascertain what is a question of law.

Senator Flynn: But in the present case it was a sure thing.

Senator Croll: Now what you are saying, in effect, is . . .

Senator Flynn: You are mixing everything up again.

Senator Croll: —that we should step into the jury room.

Senator Flynn: Not yet. When I am dealing with the amendment, I have to assume that the error of law has been found to exist by the Court of Appeal and the Supreme Court of Canada, and that the debate is only on a question of law, because the facts are admitted. My other point is that if you have a verdict of acquittal when the facts are not contested and when there is no error involved, I suggest there may be a question of law involving the jury. But that is something else.

Dealing with this provision, it is only one case, and you are trying to take away from the court the discretion that has been provided in the present law, and which to my mind may be very valuable in some circumstances. My point is that it is not sufficient. There should be some provision in the Code to deal with a verdict which is the equivalent of an error of law by the jury or a refusal to enforce the law.

Senator Langlois: It would then be necessary to define what is a question of law?

Senator Flynn: Perhaps. I do not mind that.

Senator Smith (Colchester): Mr. Chairman, could the witnesses tell us how long the existing provision has been in the Code?

Mr. Christie: Since 1930.

Senator Smith (Colchester): Could they add to our knowledge by telling us the occasion which caused it to be placed therein at that time?

Mr. Christie: I asked Miss Cochrane, one of our legal officers, to research the point. She researched *Hansard*, and we could find no light that would help to answer your question.

Senator Flynn: You could not find anything on that within the Department of Justice?

Mr. Christie: There was simply nothing.

Senator Croll: When did it change in England?

Mr. Christie: I am not sure that it ever changed in England.

The Chairman: I think England has always had it.

Mr. Christie: I was looking through Archbold this morning trying to track down another point for purposes of today's discussion and I could not find anything in there that provided an analogous right of appeal to the Attorney General of England. I believe the English act is the Criminal Appeal Act (1907). Whether things have changed since

then, I do not know. We simply did not have the time to research it. I simply cannot answer your question as to the legal position in England. If it is important, we can certainly look into it.

Senator Croll: No, it is not important. I was simply looking at it from the historical aspect.

Mr. Christie: Certainly at one time the Crown had no right of appeal at all.

Senator Croll: Yes, here.

Mr. Christie: And in England. We were ahead of England as far as giving the Crown the right of appeal.

Senator Flynn: That is correct.

Senator Smith (Colchester): Mr. Chairman, it seems to me that this is a situation where one case which has raised some comment has resulted in the suggestion that the law be changed to accommodate that comment. It would be very difficult to convince me that that kind of situation, as I mentioned in connection with an earlier matter, is one which ought to be regarded with very much favour. My goodness, almost every provision in the criminal law comes under somebody's disapproval from time to time, and the amount of disapproval, generally, is related to the sentiment which happens to surround an individual case. It does not seem to me to be very good lawmaking to respond to that kind of situation by changing the law to accommodate the disapproval; there really ought to be some jurisprudence or some legal reasoning, at least, to support a proposed amendment.

For that reason, if no other, I am inclined to view this as not being very good law. Although I am devoted to the jury system to a greater extent than some people, it does not seem to me that this is the proper way of responding to what seems to be a rather vigorous chorus of disapproval.

Senator Laird: Mr. Chairman, this is a matter of policy. I am wondering how you are going to deal with the suggestion as to whether we want to delve into it further with the minister.

The Chairman: I should say to the committee that I did discuss Senator Flynn's view with the minister, with the result that the minister said he would be prepared to appear before the committee.

Senator Flynn: I think the minister should appear before the committee. As you know, Mr. Chairman, his predecessor, the Honourable Mr. Lang, resisted this amendment for quite a long time and was very reluctant in bringing it forward.

The Chairman: As I recall it, Senator Langlois told us that Mr. Lang was overruled by Mr. Diefenbaker.

Senator Langlois: Not "overruled".

Senator Flynn: "Overpowered".

The Chairman: I am told that the minister is attending a bar convention and there may be some delay in having him appear before the committee. I take it, it is the wish of the committee to hear the minister on this point even though it may delay the conclusion of our consideration of the bill.

Senator Flynn: It should not take very long to deal with this point, Mr. Chairman. Let's postpone consideration of it

until we have dealt with everything else, at which time we can decide whether or not we want to hear from the minister.

The Chairman: Very well, we will hold this clause.

Clause 77, "Correction of a Cross-Reference in Section 644."

Mr. Christie: It is just typographical rectification.

The Chairman: Shall clause 77 carry?

Hon. Senators: Carried.

The Chairman: Clause 78 is the same thing. Shall clause 78 carry?

Hon. Senators: Carried.

The Chairman: Clause 79, "Service of Sentence in Penitentiaries."

Senator Croll: What is the purpose of clause 79?

Mr. S. F. Sommerfeld, Q.C., Director, Criminal Law Section, Department of Justice: If I may speak to that, Mr. Chairman, this would amend section 659(2) The normal rule, as honourable senators are aware, is that a person who is sentenced to imprisonment for less than two years serves that sentence in a provincial institution, not a federal penitentiary. Section 659(2) provides that where a person is in a penitentiary and serving a sentence of more than two years and is then sentenced to an additional term of less than two years, he shall be sentenced to serve that additional term in the penitentiary where he is under sentence.

There have been cases in recent years where judges failed to comply with that; in other words, instead of sentencing an accused in such circumstances to the penitentiary, the sentence would be to a provincial jail. This, of course, raised some question as to the validity of the warrants and the authority under which the accused is held, and so forth. All that section 659(2) does is to emphasize that the accused shall be sentenced and shall serve that additional term in a penitentiary.

The Chairman: Shall clause 79 carry?

Hon. Senators: Carried.

The Chairman: Clause 80, "Absolute and Conditional Discharge."

Mr. Sommerfeld: This clause has to do with the absolute or conditional discharge provision in section 662.1 of the Criminal Code. Section 662.1(3) (a) provides for an appeal where there has been an absolute or conditional discharge given. That section now says:

Where a court directs under subsection (1) that an accused be discharged, the accused shall be deemed not to have been convicted, of the offence to which he pleaded guilty or of which he was found guilty and to which the discharge relates except that

(a) the accused or the Attorney General may appeal from the direction that the accused be discharged as if that direction were a conviction in respect of the offence to which the discharge relates or, in the case of an appeal by the Attorney General, a finding that the accused was not guilty of that offence.

The object of this amendment is simply to ensure that both the accused and the attorney general have a right of appeal

from that order directing a discharge, either absolutely or on condition. The accused would have the ordinary right of appeal, where he can appeal without leave on a question of law alone, or with leave on a question of mixed fact and law, and so on. The attorney general would have a right of appeal from the order as well as if it were a direction or judgment or a verdict of acquittal.

Under section 605, as we have observed, the attorney general's appeal is confined to a question of law alone. In the case of an absolute or conditional discharge being granted, unless there were some error in law in imposing that kind of a disposition he might be barred by section 605 from having any kind of appeal. The purpose of the amendment in clause 80 to section 662.1(3) (a) is to provide that the attorney general may appeal from the direction that the accused be discharged as if that direction were a judgment or a verdict of acquittal, referred to in section 605(1) (a), which is the one that says that the attorney general has a right of appeal on a question of law alone.

Senator Langlois: This is merely a clarification of the language used in the existing law.

Mr. Sommerfeld: Yes.

Senator Smith (Colchester): It does not seem to make any difference on a question of law.

Senator Langlois: It is a clarification.

Mr. Sommerfeld: It is a clarification.

Senator Langlois: It is not a substantial change at all.

The Chairman: Shall clause 80 carry?

Hon. Senators: Carried.

The Chairman: Clause 81, "Intermittent Sentence on Default of Payment of Fines."

Mr. Christie: In 1972 Parliament amended section 663(1) (c) of the Criminal Code to provide that:

where it

That is, the court.

imposes a sentence of imprisonment on the accused that does not exceed ninety days, it may order that the sentence be served intermittently at such times as are specified in the order and direct that the accused, at all times when he is not in confinement pursuant to such order, comply with the conditions prescribed in a probation order.

Very briefly, honourable senators will appreciate that the purpose of this possibility of intermittent sentences was so that a man could serve a sentence on a weekend, on holidays and so on, and he would not be deprived of his source of livelihood.

Senator Flynn: This is often imposed in cases of drinking offences.

Mr. Christie: That is right. A question was raised whether or not this order of intermittent sentence could be made applicable when the order for imprisonment was made in default of payment of a fine.

Senator Flynn: This is a good amendment.

Mr. Christie: All this amendment does is to make it clear that if a person is sentenced to imprisonment for a period

of less than 90 days for failure to pay a fine the court could allow him to serve that sentence on an intermittent basis.

The Chairman: Subject to probation. Shall clause 81 carry?

Hon. Senators: Carried.

The Chairman: Clause 83, "Civil Disability."

Mr. Christie: The object of the amendment proposed in this clause is to permit the Governor in Council to remove the civil disability that results from a conviction for certain offences. Section 682(3) of the Criminal Code provides that a person who is convicted of any one of these offences—namely, frauds upon the government contrary to section 110, selling or purchasing office contrary to section 113, selling or delivering defective stores to Her Majesty contrary to section 376—loses his:

capacity to contract with Her Majesty or to receive any benefit under a contract between Her Majesty and any other person or to hold office under Her Majesty.

If the person convicted is granted a pardon under the Criminal Records Act the disqualification is automatically removed.

Under the present law there is no provision to relieve against a loss of capacity before a pardon is granted. Under the Criminal Records Act, if you are convicted of an offence punishable on summary conviction—putting it in capsule form—you cannot make application for a pardon until two years have elapsed, or, in the case of an indictable offence, until five years have elapsed.

The amendment proposed by this clause would permit the Governor in Council, in a case in which he considers it proper to do so, to allow the disability to be lifted. That is the purpose of the proposed amendment.

The Chairman: Shall clause 83 carry?

Hon. Senators: Carried.

The Chairman: Clause 84, "Estreat of Bail."

Mr. Sommerfeld: This is an amendment to the schedule to Part XXII of the Code, which relates to section 696. Section 696 provides that forfeitures of recognizance shall be made to the courts that are designated in the schedule to which I have referred. The effect of it, as it now is, is that application for estreat of bail in relation to cases pending before provincial criminal courts in British Columbia must be disposed of in the county court. The Attorney General of British Columbia requested that the county court judges in the province, who are overburdened with these estreat applications, be given some assistance in this regard, and that the schedule be amended to allow provincial court judges to hear estreat applications in relation to cases pending before them. The amendment simply makes that provision in the schedule to Part XXII.

The Chairman: Shall clause 84 carry?

Hon. Senators: Carried.

The Chairman: Incidentally, I notice in that clause that British Columbia is referred to as an "item". Do you think the province would object? It says, "the item, British Columbia."

Clause 88, "Breach of the Peace."

Mr. Sommerfeld: Clause 88 provides an amendment to paragraph 74(3)(a). Section 745 is a section under which, when a person feels that another person is about to injure him or his family, he can lay an information before a justice. The parties appear before the justice and there is a hearing. If the justice is satisfied that the complainant's fears are justified, he may make an order requiring the defendant to enter into a recognizance to keep the peace and be of good behaviour for a period not exceeding 12 months. In the recognizance in this case, unlike the one entered into by a person awaiting a trial or where a person is placed on probation, there is no provision for imposing conditions as well.

It was recommended by the criminal law section of the Uniform Law Conference of Canada that provision be made for the justice to impose reasonable conditions as well upon the recognizance, and that is the purpose of the amendment in clause 88.

The Chairman: Does clause 88 carry?

Hon. Senators: Carried.

The Chairman: "Summary Conviction Appeals," clauses 89 to 95, including 91.1.

Mr. Christie: Under the existing law, if a person is convicted in proceedings by way of summary conviction, he is entitled to launch an appeal by way of what is known as a "trial *de novo*", which simply means that he is entitled to a new trial. The proposed amendments would provide that if a person is convicted in summary conviction proceedings, and he launches an appeal, his appeal shall be heard on the record of what transpired below. As you well know, this is a standard procedure in relation to appeals in relation to indictable offences.

The historical reason for appeals by way of "trial *de novo*" is two-fold. In the first instance, most cases by way of summary conviction were, during the course of our development as a nation, heard by what is commonly known as a lay magistrate, that is, persons not trained in the law. Not only were they heard by lay magistrates, but those magistrates were not given adequate equipment or facilities for properly recording what transpired before them. Under the circumstances, with the provision of a trial *de novo*, a person could go to a higher court and, in effect, have a second trial. This series of amendments will do away with that, because the situation across Canada has generally developed to a point where summary conviction trials are not only held before persons trained in the law, but under circumstances where a proper record of what transpires is kept.

When we were before the Standing committee on Justice and Legal Affairs in the other place objection was raised, however, to a blanket provision that all summary conviction appeals should be heard on the record, on the ground that there are areas in Canada yet where it could well be that a person could be tried in summary conviction proceedings and the record kept of that trial would be completely unsuitable for an appeal on the record. Therefore, before the committee in the other place, an amendment was made. It will be found on page 60, clause 94(4):

...where an appeal is taken under section 748 and where, because of the condition of the record of the trial in the summary conviction court or for any other reason, the appeal court, upon application of the defendant, the informant, the Attorney General or his agent, is of the opinion that the interests of justice

would be better served by hearing and determining the appeal by holding a trial *de novo*, the appeal court may order that the appeal shall be heard by way of trial *de novo* in accordance with such rules as may be made under subsection 438(1.1) . . .

Therefore, with that amendment, the substance of what has happened is simply this. From now on appeals in summary conviction matters shall be on the record unless a party is successful in invoking subsection (4), to be found on page 60 of Bill C-71.

Senator Flynn: Would there be any possibility of additional evidence being given in an appeal, in the new regular way?

Mr. Christie: If the appeal is on the record only?

Senator Flynn: Yes.

Mr. Christie: Of course, if you appeal on an indictable situation, the court of appeal can hear additional evidence, but there are strict rules about that. Perhaps the most fundamental and strictest rule of them all is that if you want to lead new evidence before an appellate tribunal, in indictable proceedings, first of all you must satisfy the appellate tribunal that the evidence was not available at the time of the trial.

Senator Flynn: That would be the same rule.

Mr. Christie: I would imagine they would probably apply the same rule.

The Chairman: Do the clauses carry?

Senator Smith (Colchester): Could I ask one question, Mr. Chairman?

The Chairman: Yes, Senator Smith.

Senator Smith (Colchester): Does the amendment change the grounds, in any way, upon which an appeal could be made? I am not talking now about the procedure.

Mr. Christie: No, the grounds are as broad as they ever were.

The Chairman: Do the clauses carry?

Hon. Senators: Carried.

The Chairman: It is almost 5 o'clock.

Senator Flynn: I think we could stop here. If the witnesses are not exhausted, I am.

The Chairman: The committee stands adjourned until Thursday morning at 10.30 in this room.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 34

THURSDAY, MARCH 4, 1976

Fifth Proceedings on Bill C-71 intituled:

**“An Act to amend the Criminal Code and to make related
amendments to the Crown Liability Act, the Immigration Act
and the Parole Act”**

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, 18th February, 1976:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Perrault, P.C., for the second reading of the Bill C-71, intituled: "An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, March 4, 1976.
(52)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:30 a.m., the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Buckwold, Croll, Flynn, Laird, Lang, Langlois, Neiman, Robichaud and Smith (*Colchester*). (*II*)

In attendance: Mr. R. L. du Plessis, Acting Law Clerk and Parliamentary Counsel.

The Committee continued its examination of Bill C-71 intituled "An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act".

The following witnesses, from the *Department of Justice*, were heard in explanation of the Bill:

Mr. D. H. Christie, Q.C.,
Associate Deputy Minister;

Mr. S. F. Sommerfeld, Q.C.,
Director, Criminal Law Section.

As agreed upon at its meeting of Tuesday, February 24, 1976, the Committee continued its examination of the Bill by clauses or groups of clauses arranged by *subject matter* rather than by the usual numerical order.

After discussion, Clauses 14, 15, 16, 17, 18, 20, 72 and 85 carried.

The Committee considered the following amendment to Clause 102:

"In the French version strike out line 23 on page 63 and substitute therefor the following:

sent article, la présente loi ou tout article de la présente loi entre en vigueur à

The motion being put, Clause 102, as amended, carried.

Clauses 19 and 101 carried.

The Committee considered the following amendment to Clause 27:

1. In the French version strike out lines 31 to 34 on page 21 and substitute therefor the following:

301.1 (1) Quiconque
a) vole une carte de crédit,

2. In the French version strike out line 36 on page 21 and substitute therefor the following:

que une fausse,

3. In the French version strike out line 2 on page 22 and substitute therefor the following:

mise, ou

4. In the English version strike out lines 1 and 2 on page 22 and substitute therefor the following:

"is guilty of

(e) an indictable offence and is liable to imprisonment for ten years; or

(f) an offence punishable on summary conviction."

After discussion, the question being put, Clause 27 as amended carried.

Clauses 96 and 102(2), 97, 98, 99 and 100 carried.

With respect to Clause 9 and Clauses 39, 59 and 76 it was agreed that the explanation of the French version, provided by the statement by the translators of the Department of Justice, and read by Mr. Christie, would be accepted.

Consideration of Clause 75, which had been allowed to stand at the Committee's meeting of Tuesday, March 2, 1976 would be deferred until the Minister of Justice appears before the Committee to express his views on the said Clause.

At 12:10 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, March 4, 1976

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-71, to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act, met this day at 10.30 a.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: We will continue our examination of Bill C-71, and I suggest that we commence with the two clauses that we have held because of an interest expressed by Senator Asselin who, unfortunately, was not able to be here at the time they came up for discussion. These clauses are under the heading, "Drinking and Driving Offences (Breathalyzer)", being clauses numbers 14, 15, 16, 17, 18, 20, 72, 85 and 102. We will deal with the two subjects separately, beginning with those clauses related to drinking and driving offences and the breathalyzer, if you will proceed, please, Mr. Christie.

Mr. D. H. Christie, Q.C., Associate Deputy Minister, Department of Justice: Thank you, Mr. Chairman.

There are a number of purposes in relation to these clauses. The first purpose is to increase penalties for the offence of impaired driving. Under existing law, section 234, for a first offence the penalty prescribed is a fine of not more than \$500 and not less than \$50, or imprisonment for three months, or both. For a second offence the penalty is imprisonment for not more than three months and not less than 14 days; and, finally, for each subsequent offence, imprisonment for not more than one year and not less than three months. The penalty for refusing to give a sample of breath, as now prescribed, will be found in section 235(2) of the existing law:

Everyone who, without reasonable excuse, fails or refuses to comply with a demand made to him by a peace officer . . . is guilty of an offence punishable on summary conviction and is liable to a fine of not less than fifty dollars and not more than one thousand dollars or to imprisonment for not more than six months, or both.

That is the same penalty as is prescribed for driving when having alcohol exceeding .08 percentage in the blood system. Under the new law, the penalties prescribed are the same for all three: for a first offence, a fine of not more than \$2,000 and not less than \$50, or imprisonment for six months, or both; secondly, for a second offence, imprisonment for not more than one year and not less than 14 days; and for each subsequent offence, imprisonment for not more than two years and not less than three months.

Senator Asselin: So you did increase the penalty, and that is all?

Mr. Christie: Yes. The rationale behind increasing these penalties is simply that the carnage on the roads is—I do not think it is an exaggerated word to use—devastating in Canada, and it is hoped that by increasing these penalties somehow there will be a reduction in the destruction that is being caused by drinking and driving.

The next provision envisaged by the series is to provide for a conditional discharge for persons who are convicted of the offence of impaired driving, or driving with in excess of .08 per cent alcohol in the blood stream. At the moment they cannot be conditionally discharged. They will, however, if conditionally discharged, be expected to subject themselves to rehabilitative treatment, and the law provides that the sections will come into force by proclamation and it will be done on a province-by-province basis. The idea behind that is that we will bring the law into force when facilities exist in the provinces to afford the kind of rehabilitative treatment envisaged by the provisions.

Senator Asselin: When this law is implemented the provinces will not be able to apply it immediately, but must change their legislation.

Mr. Christie: They will have to provide the facilities, senator, to give the kind of rehabilitative treatment envisaged by the law, which envisages that these provisions will be brought into force on a province-by-province basis. When a province indicates that it has the facilities and the establishment to give effect to the spirit behind the law, then the law will be proclaimed. Otherwise, of course, there would be no point in proclaiming it.

The next very significant part of this change relates to permitting roadside screening by the police of persons suspected—and I emphasize that word—of having alcohol in their bodies and to create a new offence for failure or refusal to comply with a request for screening. Mr. Sommerfeld has been working very closely with a committee on forensic sciences, in which this has been the subject of very close study, and I will turn this part of the discussion over to him.

Mr. S. F. Sommerfeld, Q.C., Director, Criminal Law Section, Department of Justice: Mr. Chairman, as Mr. Christie has indicated, the object of clause 15 is to provide for a roadside screening of a person who is reasonably suspected of having alcohol in his body. The object is to aid in identifying the drinking driver who has consumed enough to be a menace to others on the road and is breaking the law by driving with more than .08 per cent alcohol content. It is an investigative tool designed to assist the police officer in deciding when he has reasonable grounds to make a formal demand for a breathalyzer test. The Canadian Society of Forensic Sciences, which is an organization composed of scientists and law enforcement people concerned with forensic investigations, established a spe-

cial breath-testing committee, which has been advising the minister on breathalyzer matters generally. It was requested to make an investigation to evaluate possible roadside screening devices. The legislation provides that the device to be used is one which is approved by the attorney general.

Within the last month, the committee reported that it was prepared to recommend a roadside screening device for this purpose, that device being the ALERT which, I understand, stands for Alcohol Level Evaluation Roadside Tester. It is a production model, so there should be no difficulty in implementing the legislation, given a certain amount of lead time to enable the police forces, and others, to properly equip themselves.

Senator Laird: You could even get one of your own and test yourself.

Mr. Sommerfeld: I am not a scientist, senator, but I understand it is somewhat more sophisticated than the devices that one can get that will simply identify whether or not there is alcohol in your blood. It is of a type that enables some quantitative measurement to be made, although not with the kind of precision that one gets with a Borkenstein breathalyzer test.

Senator Lang: How would this clause change the investigative procedures available under the law as it now stands?

Mr. Sommerfeld: In order to enable a police officer to make a demand for a Borkenstein breath test at the present time, he has to have reasonable grounds to believe that the person is impaired within the meaning of section 234. It is quite possible that a person may have been drinking sufficiently to be well over .08, but not display the symptoms that one would necessarily associate with being impaired. The object of this amendment is to enable the police officer, where he reasonably suspects that a person has alcohol in his body, to administer this roadside screen test to determine whether or not he should make a demand on the person tested for a Borkenstein breath test.

Senator Lang: What are the grounds under the section as it now stands? Obviously, this business of staggering and slurring of words is not in the Code.

Mr. Sommerfeld: No. There might be a variety of things, I suppose, which would suggest to the police officer that the individual being investigated is impaired. He might have been driving his automobile in an erratic manner, or going the wrong way on a one-way street, or he may have been involved in a minor accident and, on investigation, is found to be obviously intoxicated. Depending on the circumstances, there are a variety of things which might lead a police officer to have reasonable grounds to believe that the individual is impaired.

Senator Flynn: Is this a different test from the breathalyzer?

Mr. Christie: Quite, senator. As a matter of fact, the reason the original legislation was introduced in 1969 was to provide some kind of scientific precision to determine the quantity of alcohol in one's blood. It was determined that if one had an alcohol level of .08, one was guilty of an offence.

As Mr. Sommerfeld has just pointed out, a person could have an alcohol level of .08, and perhaps well over .08, but still not exhibit any of the usual signs, such as the slurring

of speech or staggering. The old business of walking the straight line, and that type of test, can fail completely in relation to some people, notwithstanding that they may be dangerously intoxicated.

Senator Flynn: How does this new method operate?

Mr. Sommerfeld: This new device is readily portable. It can be carried in the back of a police car. The legislation simply provides that where a police officer reasonably suspects that a person has been drinking, he can then require that individual to take a roadside screening test, as it is called.

Senator Flynn: But how is it administrated?

Mr. Sommerfeld: As I understand it, the individual blows into the machine in much the same way as he would with a Borkenstein breathalyzer, and this enables the police officer to take a reading which, as I understand it, will provide ranges of alcohol content which will, in turn, be a guide to the police officer in determining whether the individual has a reading of over .08.

Senator Flynn: So, the police officer gets the same indication as is given by the Borkenstein breathalyzer that is presently in use.

Mr. Sommerfeld: As I understand it, senator, it provides ranges of alcohol content. I am not scientifically versed on this new method; I am simply passing on what I have been told by the scientific people.

Senator Neiman: Has the government settled on a specific machine to be used? I understand various types of machines were being tested.

Mr. Sommerfeld: As I mentioned, the special breath test committee has recommended, assuming the legislation is passed, that the ALERT machine be named.

Senator Croll: Is that similar to any machines that are presently in use in the United States?

Mr. Sommerfeld: I understand this machine is used in various jurisdictions of the United States, particularly the State of Minnesota.

Senator Flynn: And the result of this test will indicate whether there is an offence or not?

Mr. Christie: No, and this is a point that I think should be emphasized. The roadside screening test does not determine whether or not an offence has been committed. It simply indicates whether there are grounds upon which a police officer can reasonably require one to submit to a Borkenstein breath test.

The Chairman: It is a preliminary test.

Senator Flynn: In that event, the police could stop any car and require the driver to take this roadside test.

Mr. Christie: It is not that simple. The police officer has to have reason to believe that there is alcohol in the blood.

Senator Asselin: "Reason to believe" is a broad expression.

Mr. Christie: If you walk out of a cocktail bar and get into your car, a police officer might well be in a position to require you to give a sample of your breath. He would then use that reading in determining whether or not there were grounds to require you to take the Borkenstein breathalyzer.

er test, to determine whether or not you had a reading of over .08. It is the Borkenstein test that determines whether or not an offence has been committed.

Senator Flynn: What are the circumstances under which a police officer can require an individual to undergo this new test, which is apparently only a preliminary to the Borkenstein test? Are they the same grounds as for a Borkenstein breathalyzer test?

Mr. Sommerfeld: No, they are not the same grounds as in the case of making a demand for a breathalyzer test. At the present time, in order to make a valid demand for a Borkenstein breathalyzer test, the police officer must have reasonable grounds to believe that an individual is impaired within the meaning of section 234. Under the proposed legislation, the object of the roadside screening test is to enable the police officer to arrive at a judgment as to whether or not he should make a formal demand for a Borkenstein breath test.

Senator Flynn: I understand that, but before using this new device, does the police officer have to have reasonable grounds?

Mr. Sommerfeld: He must have reasonable grounds to suspect that the person has alcohol in his body.

Senator Flynn: I cannot see the difference.

Senator Asselin: If the officer has no judgment, what will happen?

Senator Flynn: I cannot see the difference between the two tests.

Senator Lang: I suppose that if you do not stagger and you can walk a straight line, he can give you this test and say your reading is so-and-so and then take you in, even though you are not staggering and you do not slur your words.

Senator Flynn: You have to have reasonable grounds in both cases. I cannot see why you should use the first device, which is the primary step of forcing you to take the breathalyzer test...

Senator Laird: It is a quick and ready method of determining whether the driver is dangerous.

Senator Lang: I suppose a reasonable ground is a certain reading on this new machine.

Senator Flynn: What are the grounds for using that machine? They say "reasonable grounds" but it is the same thing. I cannot see why.

Senator Lang: You still have to stagger before you take that test.

The Chairman: It says, "reasonably suspects that a person has alcohol in his body."

Senator Neiman: Well, anyone walking out of a cocktail lounge would be a "reasonable" suspect. You could force everyone walking out of a cocktail lounge to stand and take a test.

Senator Flynn: You have to establish that they are going to use their car.

Senator Neiman: Yes, but it seems to me when you talk about a range, that range should be established to some extent so that a policeman cannot simply be capricious in

his choice of people who he is going to make stand there and take the test.

Senator Flynn: He is usually very selective.

The Chairman: Mr. du Plessis has drawn to my attention a difference in the wording which may have some significance.

In the case of section 235, that is, failure or refusal to provide a sample, it says:

Where a peace officer on reasonable and probable grounds...

Senator Neiman: "Probable" is the word.

The Chairman:

... reasonable and probable grounds believes that a person is committing... an offence...

Under the amendment, all that is required is that he reasonably suspect.

Senator Neiman: So, he is given a much wider latitude under the amended section. That is very obvious.

Mr. Christie: For the reason, senator, that I mentioned earlier, that the roadside screening does not determine guilt or innocence, but section 235 does.

Senator Flynn: It gives reasonable grounds.

Mr. Christie: One is an investigative procedure; the other one is a procedure whereby guilt or innocence can be determined. They are not the same thing.

Senator Laird: Of course, if he had more than .08 I suppose there is no question about it.

Mr. Christie: No, he still would have to be taken in and he would have to go through the breathalyzer test.

Senator Flynn: They can force him to take the breathalyzer test only if this machine gives them reasonable grounds.

Senator Laird: Would those "reasonable grounds" be more than .08 in the bloodstream?

Senator Asselin: They start at .08.

Senator Flynn: It would indicate a range, a percentage.

Senator Smith (Colchester): It would have to be very close to .08 because section 235 says:

Where a peace officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours has committed,...

So, your roadside screening device gives you very close to .08, and then you have got the reasonable grounds to believe that he has committed an offence.

Mr. Christie: We would emphasize, Senator Smith, that section 234.1 says this, and I am reading from page 12 of the bill:

Where a peace officer reasonably suspects...

Now, that is a suspicion.

... that a person who is driving a motor vehicle or who has the care or control of a motor vehicle, whether it is in motion or not, has alcohol in his body, he may, by demand made to that person, require him...

Senator Smith (Colchester): All I am saying is, let us assume that the police officer does reasonably suspect, and let us suppose he requires the test to be made by this roadside screening device, the result will have to show that the person is likely to be over .08 or the policeman cannot require him properly to go and take the regular test.

Mr. Christie: There would be no point in his doing that.

Senator Lang: He could if he was staggering and slurring his words. He might be slurring his words and staggering all over the place and have .5 in his bloodstream.

The Chairman: You mean .05.

Senator Flynn: He can be charged for impaired driving. That would be another offence. You could charge him with driving while impaired.

Senator Neiman: Walking while impaired.

Senator Flynn: You can bring that as evidence.

Senator Laird: Incidentally, and I suppose this is irrelevant but I would like to go back to the change made in the measurement. I have always felt that .08 was a bit too low and that .10 was about right. I am not a scientist and perhaps I should address my remarks to Mr. Sommerfeld; this naturally must have been arrived at after careful consideration by people scientifically equipped.

Mr. Christie: Perhaps I could speak to that. This goes back to 1969. The fact is, senator, that we looked at all kinds of laws, particularly in the United States. You can in some states find 0.1 is a requirement.

Senator Laird: Is that right?

Mr. Christie: Oh yes. However, .08 was a policy decision adopted by the government acting on advice from various sources. If you were a real tough person on drinking and driving, you could say .05 or you could say .07. There is no magic in .08; there is no magic in it at all. Obviously, there is a point, after 0.1 that anybody knows you cannot have that fool on the road. There is no magic, say, between .08 and .07, or .06 and .05, but that was a figure that was chosen and approved by Parliament.

Senator Laird: We all know that some people, depending on the size of their body, have a better tolerance to alcoholic beverages.

Senator Flynn: Not only depending on the size of their body, because I think it has been proven that people do not react the same, even if they have the same percentage of alcohol in their bloodstream.

That brings me to the point which I have often talked about on these devices. I have no objection to their use, but putting them in the Criminal Code and saying that anybody who drives should be obliged to give a test at any time and then if it is proven by the test that he has more than, let us say, .05, he would lose his licence—all right, but making a crime of the mere fact of failing the test—and, after all, it is a mechanical or a scientific test—seems to me is going into a field which does not belong to the criminal law.

That screening device reinforces my viewpoint. I agree that at any time you may be obliged to take the test, which is required by a police officer, but not for the purpose of laying criminal charges but for the purpose of taking your permit away.

It seems to me that we are going too far in this direction, and I do not know if it would help just by the fact you are putting it in the Criminal Code. If all the provinces were to adopt regulations, with regard to the holding of a driving licence, say, that at any time you have to undergo the test if required, that would be a condition of keeping your permit. That is a question of policy, and I understand that, but I have always been suspicious of this approach to this problem through the Criminal Code.

Senator Laird: It is hard to get uniform action by provinces, I suppose.

Senator Flynn: I do not know. They are just saying with regard to this new device that they are going to proclaim it as soon as each province is equipped.

Mr. Christie: The senator is quite right; it is difficult to get uniformity. This is one of the issues we will be coming to a little later in this bill. We are vacating the field about ordering prohibition against driving, because the federal law, as amended in 1972, provided that there could be intermittent orders of prohibition, the idea being that a person who had to drive to earn his living should not be absolutely prohibited. What we ran into was a situation where, under federal law, you might have an intermittent order of prohibition. For example, a truck driver could drive five days a week, but not on the week-ends, nor could he drive his own car; but under some of the provincial laws, upon conviction for impaired driving, his licence was automatically suspended, and this has led to nothing but confusion.

Senator Smith (Colchester): With reference to the increase in penalty, as I read it, the increase is simply in the maximum that may be imposed, increasing it from \$1,000 to \$2,000, and the minimum remains the same, as does the imprisonment.

Mr. Christie: The minimum still is \$50 in each case. Let me just double check that. Right; that is right, sir.

Senator Smith (Colchester): Two questions occurred to me there. The first one is: Is there any likelihood that a court will impose more than a \$1,000 fine? In other words, is raising the maximum to \$2,000 likely to make any difference, in practice?

Mr. Christie: Only experience will answer that question. Presumably, if the courts see that Parliament has increased the maximums, they will draw an inference from that. I say "presumably", but of course I cannot speak for the courts. I cannot answer your question, because such a question can only be answered in the light of experience.

Senator Smith (Colchester): I think you must have had a great deal of experience with the penalties which heretofore have been imposed by the courts, and I would think that experience would indicate that very rarely have they imposed a \$1,000 fine for a first offence.

Mr. Christie: They could not. A fine of \$500 for a first offence was all they could impose.

Senator Smith (Colchester): Do you have any information on that?

Mr. Christie: I do not have any on that. Perhaps Mr. Sommerfeld does.

Mr. Sommerfeld: No, I do not.

Senator Neiman: We have had cases in Ontario recently where magistrates have put first offenders in jail. A few of those have been appealed, and I think the decision in each case was reversed. This is as a result of the strong pronouncements made by the Attorney General of Ontario in this area.

The Chairman: It was one particular magistrate, was it not?

Senator Neiman: Yes, down in the Kingston area, I think. But he took the change of attitude in the law very seriously indeed; he put first offenders in jail.

Senator Flynn: If the Minister of Justice is not allowed to speak to judges who will not apply the law, we might add a little rider here, as we have in other sections, telling them that they may impose a fine higher than \$500.

The Chairman: Well, the Attorney General of Ontario apparently believes he can tell them.

Senator Smith (Colchester): The other question I wanted to raise is as to whether there is any evidence available which would show that increasing the maximum penalty really is a deterrent to people who might commit the offence.

Senator Laird: It sure is.

Mr. Christie: Of course, this is raising a very large philosophical question.

Senator Smith (Colchester): I am well aware of that. As a matter of fact, I suppose that those who argue for the abolition of capital punishment take the opposite view, namely, that the severity of the penalty is not a deterrent.

Mr. Christie: I think the question you have raised will be very exhaustively examined in the debate that is forthcoming.

Senator Smith (Colchester): I have no doubt of it.

Senator Laird: Mr. Christie, I am not being philosophical now, and I want to point out that any person who has been in Norway knows that that has been precisely the effect of increasing penalties. My friends, when I was there, told me that if they were going to a cocktail party, one of them agreed to have absolutely nothing to drink, and this great privilege circulated among the group who would go to cocktail parties together. It does have a deterrent effect, therefore.

Mr. Christie: I agree with you.

Senator Croll: Why would they go to the party in those circumstances?

Senator Laird: That is a good question, but this is what they do.

Mr. Christie: You know, and I know, from experience, that certain people react that way, and wisely.

Senator Laird: They take turns—"You get plastered tonight, and I'll stay sober!"

The Chairman: Or take a taxi.

Mr. Christie: Yes. Some people make a point, if they are going to a cocktail party, or a dinner party, where there is going to be a substantial consumption of liquor, of literally not driving their cars.

Senator Smith (Colchester): I am not arguing that. I am merely asking if there is any evidence available to show that the increase in the maximum penalties will act as a deterrent to people who are likely to commit the offence.

Mr. Christie: The only answer I can give you is the one I have already given. We will have to see what happens in the light of experience. I cannot help you beyond that.

Senator Lang: I am assuming this alert machine has no value as far as driving under the influence of drugs is concerned.

Mr. Sommerfeld: Not that I am aware of, but I am not up on all the scientific aspects of it. I understand it is one that simply tests for alcohol.

Senator Flynn: If you refuse to take that test, what is the penalty?

Mr. Sommerfeld: The penalty is the same as under the drinking and driving sections.

Senator Flynn: The penalty is the same as for refusing to take the breathalyzer?

Mr. Sommerfeld: That is correct.

Senator Flynn: If you are found to have, say, .08 per cent of alcohol in your blood, what is the penalty?

Mr. Christie: The new penalty?

Senator Flynn: Yes. I want to see how advantageous it would be to refuse to take the breathalyzer.

Senator Asselin: For a second offence you would go to jail.

Mr. Christie: With regard to a .08 blood-alcohol level, the situation is this: for a first offence, a fine of not more than \$2,000 or not less than \$50, or imprisonment for six months, or both.

Senator Asselin: For the first offence?

Senator Flynn: For refusal.

Mr. Christie: The senator was asking me about .08, but refusal carries the same penalty.

Senator Flynn: In other words, you are deemed to have .08 blood-alcohol if you refuse.

Mr. Christie: And the penalty for impaired driving is the same. So, we are talking about three different things. They are all, however, the same with regard to penalty. For a second offence, the penalty is imprisonment for not more than one year, and not less than 14 days. Finally, for each subsequent offence, you are liable to imprisonment for not more than two years and not less than three months.

Senator Flynn: And that is for life?

Mr. Christie: This is a mandatory imprisonment.

Senator Flynn: There is no period provided between the offences? If I commit a first offence this year, and in ten years I commit an offence this year, second is no adjustment made?

Mr. Christie: That will be offence No. 2.

Senator Asselin: Usually the judge takes this into account, though.

Senator Flynn: Not in the case of the minimum penalty.

Mr. Christie: It is not the judge so much as the crown prosecutor whose decision will affect the situation.

Senator Asselin: Does the crown prosecutor under this law have to give notice?

Mr. Christie: Yes.

Senator Asselin: If he gives notice, it can be deemed to be a first offence.

Mr. Christie: That is the way it is done.

Senator Asselin: Mr. Chairman, I wonder if Mr. Sommerfeld could explain clause 16. It says:

235. (1) Where a peace officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours has committed, and offence under section 234 or 236, he may, by demand made to that person forthwith or as soon as practicable, require him to provide then or as soon thereafter as is practicable such samples of his breath as in the opinion of a qualified technician referred to in subsection 237(6) are necessary to enable a proper analysis to be made in order to determine the proportion, if any, of alcohol in his blood, and to accompany the peace officer for the purpose of enabling such samples to be taken.

Does this mean that if somebody goes to a bar, has a few drinks, leaves the bar, and then goes home, the officer can go to his home within two hours and ask him to give a sample of his breath?

Mr. Christie: Yes.

Senator Croll: At a later time, in his own home?

Mr. Christie: No. The words are:

Where a peace officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours committed, and offence under section 234,

A police officer might receive a report of someone roaring down a side street, weaving back and forth, clipping someone's hedge, tearing up the roots and so forth, reeling into his driveway and staggering into the house. A neighbour may telephone and report that this fellow is a menace and nearly killed two or three children in that process. If that report is within two hours he can be asked for a sample of his breath.

Senator Smith (Colchester): But it has to be within that time.

Senator Flynn: The two hours is related to the efficiency of the test as much as to anything else.

Mr. Christie: Two hours was selected as a time period within which it must be done.

The Chairman: The two hours is contained in section 235.

Senator Flynn: Yes, I know, but it is related to the efficacy of the test also.

Senator Asselin: It may happen that someone who is not very happy and has had an argument, as occasionally happens in a bar, may inform the police officer that a person just left the bar in an intoxicated condition. That

man goes home and the officer can go and ask him for a sample of his breath, without his being involved in an accident.

Mr. Christie: No; he would have to have reasonable and probable grounds, as prescribed in section 235.

Senator Flynn: That, of course, could happen, though, as Senator Asselin illustrated it. If I do not like a person and report that he left the bar staggering, of course, the police officer would have reasonable grounds, but I suppose that is something that cannot be avoided.

Senator Asselin: This happens quite often.

Senator Flynn: It may.

Mr. R. L. du Plessis, Acting Law Clerk and Parliamentary Counsel: But the police officer would have to ascertain that he actually drove his car to go home.

Mr. Christie: Yes; that is written into the section.

Senator Flynn: Yes; there would have to be additional evidence.

Senator Lang: Does a person accused of driving while under the influence of a drug not have to submit to any type of test?

Mr. Christie: We have no test, as far as I know, to effectively test a person who is, for instance, loaded with marihuana, in a scientific fashion, in the sense of a breath test, the Borkenstein test. Again, if that person is staggering around and not making any sense, the inference can be drawn.

Senator Flynn: Yes; a charge of impaired driving and conviction thereon does not necessarily involve proving consumption of alcohol, but unfitness on the part of the accused to drive.

Mr. Christie: Yes, and somehow it would have to be established that he was loaded with speed, or some other drug such as marihuana.

Senator Flynn: Impaired driving is not confined to alcohol.

Senator Neiman: No; section 234 covers alcohol or drugs.

Mr. Christie: That is correct. For instance, marihuana, which is used, I will not say commonly but in many places, cannot be identified by blowing or some other simple and reasonable test. Mr. Sommerfeld can assist in this regard, because he has been working with the forensic group.

Senator Lang: A urine analysis would appear to be logical.

Senator Neiman: We had this testimony last year when we were studying the cannabis bill, that there is no test available at the moment to determine this.

Mr. Christie: That is my understanding.

Senator Buckwold: I would like to express a personal concern in this regard. I don't know whether we can introduce an amendment, but it really worries me that a man could be convicted once, and then 10 years later find himself in the same position and spend 14 days in jail, which is mandatory. I ask your opinion whether there is any manner in which that could be ameliorated a little by a shorter time limit. This means that a man is literally on

life probation and one who has taken very good care of himself could find himself one year later in jail.

The Chairman: I am not a criminal lawyer, but I would doubt if the crown prosecutor would take advantage of a person who has behaved for eight or 10 years by charging him with a second offence. I do not know.

Senator Laird: I have seen it happen in cases in which I have been involved.

Senator Buckwold: Does he not have to do that once the man is charged?

The Chairman: No.

Senator Buckwold: Can he disregard the first offence?

The Chairman: Yes.

Senator Croll: The records are usually lost.

Senator Neiman: This applies to many offences.

Mr. Christie: These are really the only offences for which an A,B,C, type of scale is provided.

Senator Neiman: For the first, second and third offence the penalty becomes higher.

Senator Buckwold: In my opinion, the members of the committee should consider this, because it could be a personal tragedy.

Senator Flynn: Three years would be a reasonable time limit.

Senator Lang: That is a good point.

Senator Neiman: The betting sections contain the same type of prescription for first and second offences.

Mr. Christie: Yes, but it is not common.

Senator Neiman: No, but there is more than one type of offence.

Mr. Christie: Yes; we are doing it with off-track betting and book-making, but that is about all.

Senator Neiman: In the entire Criminal Code?

Mr. Christie: Yes, except for the minimum of life for murder and certain forms of treason, and so on; but the general rule is, no, we do not prescribe it and scale the penalties up in that manner.

Senator Flynn: For that type of offence the discretion should be provided, because it does not attach to the moral character of the accused.

Mr. Christie: For what it is worth, I can say to honourable senators that to my knowledge we have not received any representations in the department, from the defence side or any other source, to suggest that the kind of abuse which concerns the senator exists. I do not pretend to know of every letter received in the department, but I have been pretty close to this criminal law field for many years and cannot recall a single letter representing that there had been abuse of the type that concerns the senator.

Mr. Sommerfeld: I have heard of none, either.

Mr. Christie: And Mr. Sommerfeld has been Director of the Criminal Law Section for some time now.

Senator Asselin: In my area, if someone appears before the court on a second offence within two years it will not be mentioned and he will be given a chance.

Mr. Christie: Yes.

Senator Asselin: But if someone appears twice within a year, something will be done.

Mr. Christie: Yes, and, of course, that is the object of the legislation. That type of person it is intended should be hit and hit hard.

Senator Flynn: If we uncover any abuses, we will write to you.

Mr. Christie: Certainly, I do not pretend to know of every letter received, but, as I say, I have been associated with this criminal law field for many years and I cannot recall any complaints of this being a source of abuse.

Senator Asselin: Will the federal government be informing the public of these changes in the law, or will that be left to the provinces?

Mr. Christie: Our experience in that respect, senator, is that when we enact what we call "high visibility" legislation—and legislation involving drinking and driving is high visibility legislation because so many people are affected by it—the press seems to take care of it. There is a new organization within the Department of Justice that is involved in public relations. Whether that organization will be involved in informing the public about this new legislation, I do not know. Traditionally, what Parliament enacts in the way of legislation is made known to the press gallery, the media, and the media, in turn, has made it known to the public.

As I say, we do have this new organization within the department, but I do not pretend to know what its role might be.

Senator Croll: Tell them not to put it in with the Old Age Pension cheques.

Mr. Sommerfeld: If I might add one thing to that, the Ministry of Transport, which takes a great interest, of course, in road safety, does have in preparation a publicity campaign of some nature with respect to this legislation, as I believe it did at the time the breathalyzer legislation was passed by Parliament.

Senator Flynn: The provincial government has such a program in connection with the seat belt legislation.

Mr. Sommerfeld: Yes.

Senator Flynn: In any event, you can convey the suggestion made by Senator Asselin to your new branch.

Senator Robichaud: Coming back to the point raised by Senator Buckwold, I am concerned with the fact that a second offence can result in imprisonment of not more than one year and not less than 14 days, notwithstanding that the first offence may have been committed 20 or 25 years prior to the second offence.

If the Crown proceeds on the basis of a second offence, the judge has absolutely no alternative but to impose the minimum sentence of 14 days in jail.

In my view, there should be a clause inserted to read:

A second offence shall be deemed to have been committed within three years of the first offence.

... or four years, or two years, or whatever.

Mr. Christie: The difficulty with that type of legislation, senator, is the implication that you can go out and get bombed and drive your car every two or three years. It is a double-edged sword.

Senator Neiman: I think you have to leave that type of decision to the discretion of the Crown.

Senator Asselin: The Crown has to give notice that it is proceeding on the basis of a second offence.

Mr. Christie: Unless the Crown leads evidence of the second offence, the court has to treat it as a first offence.

Senator Robichaud: I do not agree that to add such a clause would be providing a licence to get bombed every two or three years. In my opinion, after a certain period of time the first offence should be wiped out.

Mr. Christie: The solution to that, senator, is to obtain a pardon under the Criminal Records Act.

Senator Croll: That takes three years.

Mr. Christie: If the Crown proceeded against an individual by way of summary conviction, that individual can make application for a pardon after two years. In the case of an indictable offence, one can make application for a pardon after five years.

If the applicant can persuade the authorities that he is a suitable person to be granted a pardon in relation, say, to an impaired driving offence, and a pardon is granted, should he fall into the same error again, it is treated as a first offence. A pardon under the Criminal Records Act has the effect of wiping out the first offence. So, there is that alleviating mechanism to deal with the type of case you have suggested, senator.

Senator Robichaud: Do many people take advantage of the provisions of the Criminal Records Act?

Mr. Christie: I imagine so, senator, although I do not have figures readily at hand.

Senator Croll: This would involve more serious offences.

Mr. Christie: Not necessarily, senator. It may be a matter of great concern to an individual that he has on his record a conviction for impaired driving and, presumably, that person would take advantage of the provisions of the Criminal Records Act in having that conviction wiped out.

The Chairman: Shall we go on to clause 17?

Mr. Christie: The only other point to be mentioned in connection with clause 17, Mr. Chairman, is a highly technical one. Again, it arises out of the recommendations of the Canadian Society of Forensic Sciences, with which Mr. Sommerfeld has been dealing very closely. Whereas at the present time one sample can be sufficient to lead to conviction, on the scientific advice of the Canadian Society of Forensic Sciences we are changing the law so that there must be at least two samples provided.

Perhaps Mr. Sommerfeld could briefly explain this amendment.

Mr. Sommerfeld: It is directed towards the proper scientific base upon which the breathalyzer test is administered. In some jurisdictions, two tests are taken as a matter of routine for purposes of ensuring that they are sufficiently

close in result that one is not in error. In other jurisdictions, other provinces, only the one test is used.

The Canadian Society of Forensic Sciences, among others, has recommended that in all cases there be at least two tests. The purpose of clauses 16 and 18 is to provide that there be more than one sample taken and that the lowest of the samples taken will be the governing one.

Senator Flynn: Is there a delay between the two tests?

Mr. Sommerfeld: Normally, the tests are to be administered at a 15-minute interval.

Senator Flynn: But that is not incorporated in the legislation?

Senator Neiman: That is set out in clause 18(1)(c)(ii). Clause 18 also provides that the accused, on request, may be given a sample of each of the tests taken.

Senator Laird: It is designed to bring uniformity throughout all the provinces.

Mr. Sommerfeld: Yes, senator.

The Chairman: Would you go on to clause 18 now?

Mr. Sommerfeld: Mr. Chairman, clauses 16 and 18 are the two clauses that deal with the multiple samples. Clause 20 simply extends the same thing to section 240.1 which applies to operators of boats who are impaired.

The Chairman: There are three more clauses, 72, 85 and 102, under the same heading.

Senator Buckwold: Mr. Chairman, before you go on to that, I would like to ask a question about what regulations there are for the continued testing of the roadside apparatus, the approved roadside screening device. Are there regulations that require testing of that device every month or every two months, or this type of thing, to make sure that it accurately reflects the blood-alcohol level?

Mr. Sommerfeld: There are no regulations in the legislation, senator. It would be a matter of police practice to ensure that their devices are reliable. I would assume it would be the same way as they would have to ensure that such things as radar devices are reliable and not open to challenge on the basis of their being inaccurate because they are not being properly maintained.

Senator Buckwold: I have heard instances where they have not been properly maintained, and I was wondering if there were complaints to your department about this kind of thing.

Mr. Sommerfeld: I have heard of no complaints, senator.

Senator Croll: The usual question asked in regard to radar, if the case is being defended, is, "When was the equipment last tested?" And from there on if he gives a foggy sort of answer and immediately he goes on with it, the judge will on the slightest pretext throw it out.

Senator Buckwold: All it says is that it has to be approved—nothing about continued testing. I do not know whether there is a definition of "approved". This refers to a device designed to ascertain the presence of alcohol, and approved for the purposes of the section, by the order of the Attorney General. That could be five years old. I am wondering if there is any protection insofar as some compulsory testing regulation, after the equipment has been received.

Mr. Sommerfeld: The approval of the machine, senator, is directed towards the type of machine that is suitable for this, but the maintenance of it, and its continual accuracy is a matter of responsibility for the law enforcement people. As Senator Croll has suggested, if this can be successfully questioned, obviously this would have some effect on any prosecution—for example, if someone had refused to provide the sample.

The Chairman: Would you go on to the other clauses?

Senator Robichaud: I would like to refer to clause 16 simply for an explanation. The matter of two hours bothers me somewhat.

The Chairman: We fully discussed that before you came in, Senator Robichaud.

Senator Robichaud: I am sorry; I missed that.

The Chairman: That does not preclude Mr. Christie from giving a summary answer.

Senator Robichaud: I am wondering what value this has, as opposed to one hour and fifty-nine minutes or two hours and one minute.

Mr. Christie: There is nothing new about this, senator. The two-hour factor was put in in 1969.

Senator Robichaud: Is it effective? Is it operative? Is it workable?

Mr. Christie: We presume it is, again, on the basis of experience. We have had this in the statutes since 1969. That is when the two hours was put in. Again, from all sources that we received representations from—including citizens, parliamentarians, judges, defence counsel, prosecutors, and so on—no one that I am aware of has called the two hours into question. Certainly, if it has been called into question it has not been called into question in any serious way.

Now, to cast my mind back to 1969 and to recall precisely why we picked two hours, I have forgotten. All I can say is that in 1969 we took a look at a lot of things, a lot of experience—particularly in the United States. It may be that it was on the basis of our experience there.

We also had the benefit, of course, of the Canadian Society of Forensic Sciences, and the two hours was the policy decision made back at that time. This is just carrying it forward. There is nothing new about it.

Senator Neiman: Would it not have something to do also with the effectiveness of the breathalyzer mechanism, that within that period they feel the breathalyzer would be reasonably accurate?

Mr. Christie: Yes. However, as one of the other honourable senators pointed out, this .08 factor is variable. There are a lot of variables, the size of the person, perhaps his history. There are a lot of things that come into play. I cannot tell you now, casting my mind back to 1969, precisely why two hours was picked. It was not just picked out of the air. I am sure that we based it on something.

As I pointed out, there is no magic in two hours, or one hour and fifty-nine minutes or .08 or .06. Somewhere along the line, when you are drafting this kind of legislation, you have to come down with something that is solid and recognizable and real. Two hours was picked as the realistic period in the context.

Senator Flynn: Anyway, it gives a chance to the accused, because he can always say that more than two hours have elapsed because it is supposed to be two hours after committing the offence. I do not know what is meant by "committing."

The Chairman: Mr. Sommerfeld, would you go on to clauses 72, 85 and 102?

Mr. Sommerfeld: Clauses 72 and 85, Mr. Chairman, are both really consequential amendments. Clause 72 adds to the definition of sentence in section 601, the dispositions that can be made by way of conditional discharge for rehabilitative treatment. It adds those to the definition of sentence in section 601, which is the indictable offence part.

Clause 85 does the same thing with section 702, which is in the summary conviction part. The last one, is, clause 102, and, Mr. Chairman, clause 96 should really be considered with this as well. Clause 96 repeals the present section 774 of the Criminal Code which is the section dealing with proclamation.

Section 774 now reads: Subparagraph 237(1)(c)(i), clause 237(1)(f) (iii)(A) and the definition of "approved container" in subsection 237(6) shall come into force on a day or days to be fixed by proclamation.

This, as I understand it, was inserted in the legislation originally because there was no approved container available in which a person could be given a sample of his breath. Provision was made for not proclaiming those sections. The reason it now has to be amended is because, as I have indicated, in two sections we have provided for more than one sample, and this present clause provides that where a person has given a sample of his breath he will be entitled, on demand, to have a duplicate sample, as it were, for himself. Again, we still do not have the approved container, so therefore it is necessary to make provision for holding proclamation of them.

The amending clause 102, as it now stands, simply makes that same provision, covering, as I say, the changes that we have made with respect to multiple samples.

The Chairman: Any questions? Do clauses 14, 15, 16, 17, 18, 20, 72, 85 and 102, under the heading "Drinking and Driving Offences (Breathalyzer)," carry?

Hon. Senators: Carried.

The Chairman: I am advised that there is a technical amendment to clause 102, applying to the French version. This was circulated to members of the committee.

Senator Flynn: This is proposed by the department, anyway.

The Chairman: Shall clause 102(1), as amended, carry?

Hon. Senators: Carried.

The Chairman: We now come to clauses 19 and 101, under the heading, "Proof of Status of Driver and Driving While Disqualified or Prohibited."

Mr. Christie: Mr. Chairman, prior to 1972 the Criminal Code provided that upon conviction for certain drinking and driving offences the presiding judge could make an order prohibiting the convicted person from driving for specified periods of time. In 1972 Parliament amended that legislation to provide that the order of prohibition could be on an intermittent basis. Prior to that amendment there

was a judicial conflict as to what the law was. In British Columbia the court of appeal said that you could, under existing laws, make intermittent orders of prohibition. Ontario, Alberta, New Brunswick, and, I believe, one other province, took a different view. Parliament decided that intermittent orders should be possible for the reason that I mentioned earlier—namely, that a person whose livelihood depends on driving would be subject to much more severe punishment for the same offence than a person who simply uses his car to go to work, or for pleasure unrelated to earning his living.

The provinces, of course, as honourable senators are aware, license drivers and they have legislation on their books, which varies across the country, that upon conviction for certain drinking and driving offences under the Criminal Code the license shall be suspended. Some of these provisions are absolute in their nature, and others are not; but you could have a situation—and we have run into this since 1972—where a person could be told by a magistrate, for example, upon conviction for impaired driving, “As you earn your living by being a trucker, the order of prohibition applies only on week-ends and in relation to your own vehicle. You can go on earning your livelihood.” At the same time the provincial law would come in, vis-à-vis his licence, and say, “You are absolutely prohibited from driving.” In other words, his license would be stripped away from him. Well, of course, people just do not understand that kind of constitutional conflict, and the result of what is being proposed here is that the federal government is going to vacate the prohibition field and leave it to the provinces.

Senator Smith (Colchester): Which clause is that?

Mr. Christie: Clauses 19 and 101.

Senator Flynn: I think it is sound.

Senator Laird: We had plenty of trouble down our way in Windsor over this.

Senator Croll: We are not giving up anything, really.

Mr. Christie: Well, we are trying to rationalize what is a conflict that the average person does not understand. Mind you, we are still retaining, in the Criminal Code, as a criminal offence, driving while your licence is suspended.

Senator Robichaud: The provinces had and still have the power to appoint a drivers licence appeal board—or they did, back in 1966, in New Brunswick.

Mr. Christie: Oh, yes. As I said, the provincial law is not consistent. In some provinces the order is absolute. I believe, for example, in Manitoba—and I am just speaking from memory—in the case of a conviction for impaired driving the licence is suspended automatically for six months or a year, just like that. Senator Robichaud would know better than I, but I believe that in New Brunswick they do have some room for flexibility.

Senator Robichaud: We have an appeal board, and the appeal board may re-issue the licence for the purpose of driving from home to work, and from work to home, or some such thing; but licences can be re-issued on a provisional basis while suspended.

Senator Flynn: They are always sensible in New Brunswick.

Senator Croll: Or they were.

Senator Flynn: You do not think they are now?

Senator Croll: Not as good as when Senator Robichaud was there.

Senator Neiman: Mr. Chairman, this is a question with regard to the actual drafting. If we are repealing subsections (1) and (2) of section 238, would not subsection (3) be re-numbered and would that following section not also be renumbered?

Mr. Christie: Not necessarily.

Senator Neiman: Well, you are renumbering a section as subsection (3), but there will be no subsections (1) and (2).

Mr. Christie: There is nothing novel about that, senator. I do not pretend to be an expert draftsman, but you will find, I think, if you will search through your Code, something like, “subsection (1) repealed.”

Senator Neiman: And they do not bother saying they are renumbered.

Mr. Christie: No. When they come to the consolidation exercise, which happens every ten years, everything is brought together in a package.

The Chairman: Do clauses 19 and 101 carry, honourable senators?

Hon. Senators: Carried.

Senator Robichaud: If I had the Criminal Code in front of me I would have the answer to this question, but clause 16 and clause 20, as I understand it, read identically, except that one applies to section 234 or 236, and the other to section 240 (4) of the Criminal Code. The clauses otherwise are identical. Is this repetitious, or what?

Mr. Christie: Where is this?

Senator Robichaud: Clause 16, on page 13 of the bill, and clause 20, on page 18. They read identically except for the change from 234 or 236 to 240 (4).

Mr. Sommerfeld: Clause 20 relates to section 240.1 of the Criminal Code, which is the section having to do with an impaired operator of a boat.

Mr. Christie: That is an offence.

Mr. Sommerfeld: It extends those provisions to that situation.

Senator Robichaud: One applies to a boat and the other to a car?

Mr. Sommerfeld: Yes.

The Chairman: We now proceed to clause 27, “Credit Cards”. We deferred discussion of this clause at the request of Senator Neiman. Senator Neiman, the Department of Justice has drafted an amendment. Do you wish to comment on that now in light of the change?

Senator Neiman: Mr. Chairman, as I indicated at the last meeting at which I was able to be present, I did wish to propose an amendment to this clause for the reason that I felt that the penalties as set out in the present clause are somewhat too onerous, considering the range of offences that could be committed under this particular section. Mr. du Plessis was good enough to provide an amendment for me, which also simply includes a paragraph providing that

the offence is also punishable on summary conviction. I understand that this has been approved by the department and Mr. Christie, as a result of which we now have the two versions of the amendment.

Mr. Christie: For the purposes of the record, senator, it should be made clear that I cannot approve or disapprove.

Senator Neiman: I am glad that you at least agree so far with my proposed amendment.

Senator Flynn: Let us say, he does not object.

Senator Laird: This makes sense, Mr. Chairman.

Senator Croll: What was the concept for bringing in what appears to be an onerous section? What was the thinking behind it?

Mr. Christie: Simply this, senator: the credit card itself is worth a few cents, it is a piece of plastic which in itself is worthless. Credit cards, as you know, have become a very important and a very significant means of commercial transactions in Canada, indeed in North America, Europe and perhaps other areas of the world. The thinking behind it was to make it clear that if a person steals this piece of plastic, which is worth a few cents, or traffics in it, or does any of those things which are set out in clause 27 in relation to credit cards, the consequences could be extremely serious. They would be serious to the extent that the government created the offence and made it indictable and punishable and by a maximum of 10 years' imprisonment.

Senator Neiman's point is that in the range of offences covered vis-à-vis credit cards, as such, there may be cases in which it would be proper for the Crown to proceed by way of summary conviction, as opposed to proceeding by way of indictment. Of course, proceeding by way of summary conviction would bring the standard penalty of a maximum of six months' imprisonment, a fine of \$500, or both, into play.

Senator Robichaud: And that is at the discretion of the crown prosecutor.

Mr. Christie: That is correct.

Senator Laird: That makes sense, because I could rattle off examples of really bad offences that have been committed and, on the other hand, certain actions which did not deserve all that severe a punishment.

Senator Croll: My concern is that the section arrived here, rather heavily loaded, suddenly, out of the clear blue sky, providing 10 years' imprisonment for offences involving credit cards. That passed through your hands, you had consultation with respect to it with the minister, and others, and it seems to have had general acceptance. It is something entirely new. Do other jurisdictions in which similar problems exist treat such offences in this fashion?

Mr. Christie: Oh, yes; there are a number of states in the United States which have legislation especially designed for the fraudulent use of and dealing in credit cards. This is not novel.

Senator Croll: No; I am thinking of the penalty. Originally it was 10 years, which shocked me more than anything else.

Mr. Christie: It is a policy decision, senator. Under the Criminal Code penalties are broken up for indictable

offences, with one or two exceptions, in this basic pattern: two years; five years; 10 years; 14 years; and life imprisonment. That is the fundamental pattern with respect to imprisonment in relation to indictable offences. A policy decision was made that 10 years in proceedings by way of indictment was a suitable penalty. You could argue in favour of five years; someone else could argue in favour of 14 years.

Senator Croll: That is not really what I am arguing. Here you are, Mr. Christie, with years of experience in this field. You sat around discussing this, calling upon your knowledge, and that of others with you who have drafting experience, and your minister, you being the deputy in this case, and came out of a clear blue sky with 10 years for these offences. I would have thought there would have been resistance to that.

Mr. Christie: It is not necessarily out of a clear blue sky; we take a look at the 10 year group and the 14 year group. For example, forgery generally carries 14 years, but this offence carries 10 years. However, here we are dealing with a package of offences in relation to credit cards and we did not just home in on forgery and say, therefore, 14 years. We look at the package and we look at, as I say, the offences which carry 10 years.

Senator Croll: What is it for false pretences?

Mr. Christie: The penalty for obtaining by false pretences is 10 years' imprisonment. In arriving at these penalties, we look at the offence and try to fit it into the general scheme of the Criminal Code. I cannot put it any higher than that. We have no mathematical formula by which we arrive at these sentences.

Senator Flynn: There is no minimum sentence, in any event.

Mr. Christie: That is right. As I say, we do not pretend to have any mathematical formula for determining these things. We simply look at it on the basis of experience and what the legislators are prepared to approve. Those are the criteria which determine it. It is as simple as that.

Senator Neiman: I notice that the amendment includes an additional amendment to the French version of the text. In that connection, what do you think is meant by "falsifying a credit card"? How do you forge a credit card, to begin with? It is my understanding that the first thing the owner of a credit card is supposed to do is sign that credit card.

Is the offence of forging the act of using that credit card and copying the signature on it; and, if so, what is "falsifying a credit card"? The French text uses the phrase "que une fausse." I am not sure what that means in either the English or French version.

Mr. Christie: I think you have hit on a drafting point, senator, of some significance. To be perfectly frank, I cannot give you a clear-cut answer as to the difference between "forging" a credit card and "falsifying" a credit card. I have examined the definition of "forgery" carefully, and I have caused research to be done in relation to what amounts to falsification. I can only say that perhaps the draftsmen, out of an abundance of caution, used the word "falsify" in addition to the word "forgery".

In trying to track it down, the closest I could get to it was that those who were concerned with drafting this document apparently took a look at section 238 of the Customs Act, which reads as follows:

Every person who forges, counterfeits, falsifies, or uses when so forged, counterfeited or falsified, any paper or document required under this Act . . .

and so forth. So that language is used in section 238 of the Customs Act.

Coming back to what I said originally, I cannot give you a clear-cut answer. Perhaps the word "falsify" is redundant in the context. However, its presence cannot do any harm. The Crown can either choose to use the word "forge" or the word "falsify" in the charge.

Of course, the word "falsify" has a meaning. You can find meanings attributable to it in dictionaries, including the Jowett Dictionary. Perhaps it is a bit redundant in the context, but I do not think it does any harm.

Senator Buckwold: It is like chicken soup; it cannot do any harm.

Senator Flynn: I think it is perfectly proper to use both terms. The term "forgery" conveys the idea of creation, the making of a card. That would be forgery. However, if you had an existing card and you erased the signature on it, substituting your own, you would then be falsifying that card.

Mr. Christie: The presence of the word "falsify" cannot possibly work an injustice, in any event.

Senator Neiman: I quite agree.

Mr. du Plessis: If the Crown chooses to proceed against an individual for the offence of forging a credit card, would it have the choice of proceeding under the forgery provisions of the Criminal Code?

Mr. Christie: Yes, I would think so.

Mr. du Plessis: That being so, it would then have a choice of asking for a 10-year or 14-year penalty.

Mr. Christie: Yes. There is nothing novel about that. If you make a close examination of the Criminal Code and other federal legislation, you will find the same conduct prohibited under more than one provision.

The Chairman: If honourable senators are agreeable, we can have the amendment to clause 27 inserted into the record at this point.

Hon. Senators: Agreed.

Text of amendment follows:

"That Bill C-71 be amended

(a) by striking out in the French version

(i) lines 31 to 34 on page 21 and substituting the following:

"301.1 (1) Quiconque

a) vole une carte de crédit,"

(ii) line 36 on page 21 and substituting the following:

"que une fausse,"

(iii) line 2 on page 22 and substituting the following:

"mise, ou"; and

(b) by striking out lines 1 and 2 on page 22 and substituting the following:

"is guilty of

(e) an indictable offence and is liable to imprisonment for ten years; or

(f) an offence punishable on summary conviction."

The Chairman: Shall clause 27 carry, as amended?

Hon. Senators: Carried.

The Chairman: The next item is clause 75, "Morgentaler Case". I can now report to the committee that at the suggestion of Senator Flynn I have spoken to the Minister of Justice and he informs me that he is prepared to appear before the committee at 2.30 next Tuesday to discuss the particular points raised by Senator Flynn. Is that agreeable?

Hon. Senators: Agreed.

The Chairman: Next, we have two "Consequential Changes Pertaining to Clause 18," which we adopted earlier, clauses 96 and 102(2).

Mr. Sommerfeld: Mr. Chairman, those were dealt with in connection with the drinking and driving provisions.

Senator Neiman: We adopted those.

The Chairman: Yes. Shall clauses 96 and 102 carry?

Hon. Senators: Carried.

The Chairman: Clause 97, "Correction of an Omission in the Crown Liability Act."

Senator Flynn: That is quite obvious.

The Chairman: Shall clause 97 carry?

Hon. Senators: Carried.

The Chairman: There are two amendments to the Parole Act, clauses 98 and 99, and clause 100. Clauses 98 and 99 deal with deportation of persons under parole, and clause 100 deals with the method of computing term of imprisonment.

Mr. Christie: Mr. Chairman, dealing with clauses 98 and 99, this amendment simply provides that a person who is under parole may be deported. We could have a situation where a person might come from, say, the United States and commit a bank robbery, with the result being that he is sentenced to life imprisonment, the effect of which is that he is on parole for life.

Section 32(2) of the Immigration Act provides:

A deportation order that has been made against a person who was at the time of its issue an inmate of any penitentiary, gaol, reformatory or prison or becomes an inmate of such an institution before the order can be executed shall not be executed until such person has completed the sentence or term of imprisonment imposed or as reduced by a statute or other law or by a valid act of clemency . . .

The Parole Act provides that a person who is out on parole is still serving his sentence. For that reason, we run into this block under section 13 of the Parole Act. Under section 13 of the Parole Act a new subsection (3) is being added:

(3) Notwithstanding subsection (1), . . .

This refers to the Parole Act.

. . . for the purposes of subsection 32(2) of the Immigration Act, the term of imprisonment of a paroled

inmate shall, while the parole remains unrevoked and unforfeited, be deemed to be completed.

Obviously, the essence of it is that this could enure to Canada's benefit to get rid of some of these people rather than have them forced to stay here when in many cases they contribute nothing except trouble.

The Chairman: Do clauses 98, 99 and 100 carry?

Hon. Senators: Carried.

The Chairman: There remains only clauses 75 and the French versions. If honourable senators wish to stay a little longer, I have a reply in regards to the French translation of certain terms. I have this from the Department of Justice. This is from Mr. Jean Ste-Marie, of the Legislation Section, a memorandum addressed to Mr. Sommerfeld. It reads:

Pursuant to your letter of today, I have examined closely the amendments suggested by some senators of the Standing Committee on Constitutional and Legal Affairs and I have come to the following conclusions:

1. The words "même indéterminée" in line 41 on page 7 are the most accurate words to render in French the English phrase "whether ascertained or not" in lines 40 and 41 on page 7; the word "indéterminé" is as broad as the word "ascertained". The proposed amendment to the French version would be acceptable if the English version were to be amended to read "whether identified or not".

Senator Robichaud: I do not agree, but I will accept it.

Senator Flynn: What if we were to say "identified or not"; what would you say to that,

Mr. Christie?

Senator Neiman: Did we decide what the difference in law was between being "ascertained" and being "identified"?

Mr. Du Plessis: I think we decided that "identified" was a more specific term.

Senator Neiman: How much more?

Mr. Du Plessis: I do not know whether we really need a specific term in that particular context because we are talking about persons known or unknown. We are not really talking about whether they have been fingerprinted for identification purposes. In that context, I can certainly see that there is some justification for leaving the text as it is now written in other words, "ascertained or not". It is just a general reference to people known or not known.

Senator Flynn: You may be right, but the French word still seems to not render the same meaning as "ascertained". Anyway, if that is it, I would not resist. Keep it.

The Chairman: We will leave it as is then.

Hon. Senators: Agreed.

The Chairman:

2. The noun "fuite" and the verb "s'esquiver" used in clauses 39, 59 or 76 should be retained as they

describe an action as does the verb "abscond". The words "absence non justifiée" describe a state rather than the action, the intent of escaping as is implied in "abscond".

Senator Flynn: It makes it more difficult for the Crown, in a way, because the Crown has to bring in evidence that he has gone away; whereas if he does not appear and there is no justification brought forward either by his lawyer or the police, then he is deemed to have absconded.

I am not particularly concerned but you are making it much more difficult, I would think, for the Crown in using the word "fuite." "Fuite" means an act, as you said; and "absence non justifiée" is a state that can be established by the mere non-presence, and without any explanation being given by anyone.

Mr. Du Plessis: Your comment, Senator Flynn, also presumably would apply to the English word "abscond" because it has the same connotation.

Senator Flynn: Maybe. I am not an expert on the meaning of "abscond" but I have always understood that it meant exactly that, "unjustified absence".

Senator Laird: I would agree.

Senator Flynn: It has always meant that to me. I have listened to trials, and when someone has absconded, the fellow has not gone away, he is just not there and has not explained why.

Mr. du Plessis: I think it might be interesting to look at a couple of dictionary definitions of the word "abscond". I believe we have to look at the English text and then, afterwards, decide if the French text reflects the intent expressed in the English text.

Senator Flynn: As I say, I am not really concerned. It will be a problem for the Crown.

Senator Laird: Yes.

Senator Flynn: I am afraid we are creating trouble in using the word "fuite". I will go along with whatever you say, Mr. Christie.

Mr. Christie: Well, speaking for the department, Senator Flynn, we are quite prepared to defer to the views expressed by Mr. Ste-Marie.

The Chairman: Shall we leave it at that?

Senator Flynn: Yes, the reservations have already been expressed.

Hon. Senators: Agreed.

The Chairman: We have now approved all clauses except clause 75 and this afternoon, if the Senate approves the motion referring to this committee the new "peace and security" legislation, would the committee agree that we discuss on Tuesday the procedure we should follow, after we have disposed of clause 75?

Hon. Senators: Agreed.

The Chairman: That will be one of the other items on the agenda then. The committee is now adjourned until next Tuesday at 2.30 p.m.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 35

WEDNESDAY, MARCH 10, 1976

Sixth and final proceedings on Bill C-71 intituled:

**“An Act to amend the Criminal Code and to make
related amendments to the Crown Liability Act, the
Immigration Act and the Parole Act”**

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(19)

**Ex officio* member

(Quorum 5)

ERRATUM

Issue No. 32 of Thursday, February 26, 1976 contained an error. It should be corrected as follows:

On page 32:12, in the first column, on line 38 strike out the word "describe" and substitute therefor the word "tried".

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, 18th February, 1976:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Perrault, P.C., for the second reading of the Bill C-71, intituled: “An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act”.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.”

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, March 10, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 9:30 a.m., the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Flynn, Hastings, Laird, McIlraith, Neiman, Robichaud and Smith (*Colchester*). (8)

Present but not of the Committee: The Honourable Senator Haig.

In attendance: Mr. R. L. du Plessis, Acting Law Clerk and Parliamentary Counsel.

The Committee continued its examination of Bill C-71 intituled "An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act".

The following witnesses, from the *Department of Justice*, were heard in explanation of the Bill:

The Honourable R. Basford,
Minister of Justice and
Attorney General of Canada;

Mr. D. H. Christie, Q.C.,
Associate Deputy Minister.

The Minister of Justice provided an explanation and answered questions relating to Clause 75 of the Bill, consideration of which had been postponed from the Committee's previous meeting.

After discussion, the Honourable Senator Flynn moved that Clause 75 be deleted and that the subsequent clauses be renumbered accordingly. The question being put the amendment was declared lost.

Clause 75 carried, on division.

The Committee then considered a new proposal for amendment to the French version of Clauses 39 and 59 and to the heading in Clause 59. The amendments read as follows:

Page 27: Strike out lines 11 to 13 of the French version and substitute therefor the following:

"431.1 (1) Nonobstant la présente loi, lorsqu'un prévenu, inculpé conjointement ou non, s'esquive au cours de son procès."

Page 27: Strike out line 31 of the French version and substitute therefor the following:

"prévenu du fait qu'il s'est esquivé."

Page 27: Strike out lines 39 and 40 of the French version and substitute therefor the following:

"(4) Lorsque le prévenu qui s'est esquivé au cours de son procès ne comparait pas, alors que son procès se poursuit, son avocat"

Page 42: Strike out the heading immediately following line 22 of the French version and substitute therefor the following:

"Prévenu qui s'esquive"

Page 42: Strike out lines 23 to 26 of the French version and substitute therefor the following:

"471.1 (1) Nonobstant la présente loi, lorsqu'un prévenu, inculpé conjointement ou non, s'esquive au cours de l'enquête préliminaire,"

Page 43: Strike out line 4 of the French version and substitute therefor the following:

"prévenu du fait qu'il s'est esquivé."

The question being put, the French version of Clauses 39 and 59 as amended, carried.

Clause 1 carried.

The title carried.

The Committee agreed to report the Bill as amended.

At 10:55 a.m. the Committee continued *in camera*.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Wednesday, March 10, 1976

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-71, intituled: "An Act to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act", has, in obedience to the order of reference of Wednesday, February 18, 1976, examined the said Bill and now reports the same with the following amendments:

1. *Page 21*: Strike out lines 31 to 34 of the French version and substitute therefor the following:

"301.1 (1) Quiconque

a) vole une carte de crédit,"

2. *Page 21*: Strike out line 36 of the French version and substitute therefor the following:

"que une fausse,"

3. *Page 22*: Strike out line 2 of the French version and substitute therefor the following:

"mise, ou"

4. *Page 22*: Strike out lines 1 and 2 and substitute therefor the following:

"is guilty of

(e) an indictable offence and is liable to imprisonment for ten years; or

(f) an offence punishable on summary conviction."

5. *Page 27*: Strike out lines 11 to 13 of the French version and substitute therefor the following:

" «431.1 (1) Nonobstant la présente loi, lorsqu'un prévenu, inculpé conjointement ou non, s'esquive au cours de son procès,"

6. *Page 27*: Strike out line 31 of the French version and substitute therefor the following:

"prévenu du fait qu'il s'est esquivé."

7. *Page 27*: Strike out lines 39 and 40 of the French version and substitute therefor the following:

"(4) Lorsque le prévenu qui s'est esquivé au cours de son procès ne comparaît pas, alors que son procès se poursuit, son avocat"

8. *Page 42*: Strike out the heading immediately following line 22 of the French version and substitute therefor the following:

" «Prévenu qui s'esquive"

9. *Page 42*: Strike out lines 23 to 26 of the French version and substitute therefor the following:

"471.1 (1) Nonobstant la présente loi, lorsqu'un prévenu, inculpé conjointement ou non, s'esquive au cours de l'enquête préliminaire,"

10. *Page 43*: Strike out line 4 of the French version and substitute therefor the following:

"prévenu du fait qu'il s'est esquivé."

11. *Page 46*: Strike out line 28 of the English version and substitute therefor the following:

"that there was a legitimate excuse for his"

12. *Page 63*: Strike out line 23 of the French version and substitute therefor the following:

"sent article, la présente loi ou tout article de la présente loi entre en vigueur à"

Respectfully submitted,

H. Carl Goldenberg,
Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, March 10, 1976

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-71, to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act, met this day at 9:30 a.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, we continue our study of Bill C-71, which I expect we will complete this morning. Apart from one housekeeping item, which I will leave to the end, the remaining clause for discussion is clause 75, referred to in the table as "Morgentaler Case, Provision Re Appeals". Senator Flynn raised some questions with relation to the amendment which will prevent a court of appeal from reversing an acquittal verdict in a case in which the verdict is that of a court composed of a judge and jury. At the request of the committee, the Minister of Justice is with us to answer questions. Perhaps, Senator Flynn, you might raise the point that you have already raised in committee?

Senator Flynn: Thank you, Mr. Chairman. I wish to thank the minister for accepting our invitation to appear this morning, because the questions I put to Mr. Christie were really questions of policy, and I do not think that he was in a position to reply to the particular points. I do not think I need put forward again all the facts which we have discussed and which lead to this proposal.

This is, of course, a case in which the jury was misdirected by the judge, a case in which the jury was misdirected by the judge, according to the appeal court of Quebec and the Supreme Court of Canada, in which the facts were admitted. The courts of appeal decided that the only defence proposed by the accused consisted of defences in law, that these defences were not available to him and, consequently, it was a proper case for using the present provision of the Criminal Code under which the court may quash the verdict of acquittal and substitute a verdict of guilty because the decision of the jury would have, or should have, been a verdict of guilty. This provision, as has been explained, was inserted in the Criminal Code in 1930 and this is the first time, according to the information we have been able to secure, that a court of appeal has used it.

The other point is that I understand that when this decision was made representations were put forward to do away with the provision and limit the powers of the court of appeal or the Supreme Court to the ordering of a new trial; to remove the power to substitute a verdict of guilty in a case in which there had been a verdict of acquittal. Because the present provision says "if it were not for the error in law", I considered a similar case in which the judge presiding over a court composed of a judge and jury makes no mistake in law, the facts are admitted, the

defence in law proposed by the accused is set aside, and the judge instructs the jury not to take this defence into consideration because it is not available to the accused, yet there is a verdict of acquittal. It appears to me that according to the jurisprudence the error in law which is mentioned in section 605 allows the court of appeal to intervene when there is a verdict of acquittal.

It seems to me that in a case like the one I have suggested, the verdict might stand because it is not clear. If there is no error in law made by the judge, there can hardly be an error in law, according to the jurisprudence, made by the jury.

That was my point. I was wondering, first, why you do away with the present provision when it has been used only once by a court of appeal or the Supreme Court. Do you think that is sufficient to change the law because of one case, and where it seems, according to the legal opinions that are gathered, that the court used this discretion properly? That is my first question, Mr. Minister.

The Honourable Ron Basford, Minister of Justice: Briefly, the answer is yes. While I agree with you, senator, that this would appear to have been the only case—and I rely for that on the Supreme Court of Canada—it seems to me to be an important case. The statement of the Supreme Court of Canada is an important one, and raised with those of us in government, Parliament and in the country, a question about the jury system that should be put at rest—namely, be put at rest by this amendment.

If it is in the law, and it was put into the law in 1930, we might find out why it was put into the law. *Hansard* is totally silent on this subject. If it was put into the law in 1930 and has never been used, it would appear not to be a protection, as I think you—and I read the record—suggest that it is.

We have had to balance whether this protection—I am using your words—which has not been used for 46 years, is worth preserving, as opposed to the very considerable concern about the health of the jury system that was highlighted not by this case but by the Supreme Court of Canada.

Senator Flynn: You may refer to the opinions of those who were dissident, but on the whole those who formed the majority said, in short, that it was a proper case in which to use the provision.

Hon. Mr. Basford: I do not want in any way to imply that the Supreme Court was wrong.

Senator Flynn: They said this was a proper case, because the facts were admitted.

Hon. Mr. Basford: I am saying that in the judgment of the court, or in two of the judgments, where it was commented on, it appeared to be without precedent. Mr. Jus-

tice Pigeon used this expression, and the Chief Justice said it was an exceptional, if not the only case, which gave rise to those of us in government, and to many people in Parliament, reaching the conclusion that this expression from the court was a proper basis on which to change the law and revert to the pre-1930 situation, and, as I understand it, to continue the practice which is followed in the United Kingdom. I would be delighted to read into the record a strong statement on the British system.

Senator Flynn: I have no objection to that, but I do not think the British system should necessarily be the one to guide us. I do not think we have the same kind of country, geographically or constitutionally. But I am not entering into that argument. I am merely saying that it can hardly be said that this was an abuse of the discretion given the court of appeal, since this is the first time it was used in 46 years. It was not an abuse, I would say.

Hon. Mr. Basford: I am not suggesting it was abused by the court of appeal. Nor did the Supreme Court of Canada suggest that. I am suggesting that, to use your words, the use of this valuable protection—I am paraphrasing your earlier statement—which has not been used for 46 years by a court of appeal raises in the minds of many serious questions about the jury system, and the government and Parliament is entitled to change this.

Senator Flynn: Yes, but I would suggest that only one case does not prove that this provision is a bad one.

Hon. Mr. Basford: If the law should be changed on the basis of just one case—and as you pointed out earlier, the code is attacked in court every day—that does not lead generally to an immediate amendment.

Senator Flynn: Not usually, but in this case it did.

Hon. Mr. Basford: Except that in Bill C-71 each amendment results from generally adverse comments in court about the various provisions or lack of provisions, and it seems to me an exceptional case when you have the Supreme Court of Canada saying, in fact, that this is an exceptional case, a singularly exceptional case. That does not happen day by day.

Senator Flynn: But the clause was inserted obviously for exceptional cases. Even if there was no debate in the house when it was introduced, the object of the amendment made in 1930 is quite obvious.

First, I would suggest that it is to prevent a repetition of trials when the facts are admitted—there is no doubt about the facts, the accused admits the facts—and to prevent another trial, which apparently is useless because there is an admission by the accused. In law the court says, "This admission does not give the accused any defence in law," and since there is no defence in fact, because the facts are admitted, the verdict should be changed in order to avoid useless repetition of a trial. In my opinion, that is the object of the section.

Hon. Mr. Basford: I do wish to comment on particular cases which are still before the courts, but my understanding is that there were no such admissions at law.

Senator Flynn: I think the facts were admitted. There is no doubt about that. You can read the notes of all the judges.

Hon. Mr. Basford: But the law was never admitted, and never has been.

Senator Flynn: The law, yes, but the law is something for the courts and not for the jury.

Hon. Mr. Basford: That might be a debatable point. Honourable senators might find this of interest, and perhaps I should read a short extract from Sir Patrick Devlin's *Trial by Jury*. It says:

The fundamental distinction between the power of the civil jury and the power of the criminal jury is that a verdict of a civil jury cannot survive if it is contrary to law, and a verdict of acquittal can. This great power of acquittal rests upon three pillars. First, there must be a verdict; the defence can never be withdrawn from the jury; the word of condemnation must come from the lips of their foreman. Secondly, there is no power to demand a special verdict. The jury cannot therefore be made to explain their verdict; they cannot be questioned upon it. They are to be told what the law is, but in an case which involves both fact and law no one is to know whether they have followed the law or not, for under a general verdict no one can know how they have distinguished between fact and law. As Lord Mansfield said in the passage I have quoted: "The distinction is preserved by the honesty of the jury. The constitution trusts, that under the direction of a judge they will not usurp a jurisdiction which is not in their province." The third is that even in a case in which a verdict of acquittal is such that it can only be contrary to law, nevertheless it is the last word. That is secured by the fact that the common law gives no power to the judge to set it aside; and that the statutory power of setting aside a verdict vested in an appellate court, which is the way whereby the unlawful verdicts of civil juries can be controlled, cannot in a criminal case be invoked at the suit of the prosecution.

I do not mean that juries are above the law. The should obey the law. But it is an obedience which they cannot be compelled to give. They are the wardens of their own obedience and are answerable only to their own conscience, so that no man can be convicted against the conscience of the jury. The thirty-ninth clause of Magna Charta . . .

And I must admit, I have not looked at the Magna Charta since law school.

. . . may have had little or nothing to do with the origin of the jury. But it is a fact that the great statement is now being literally fulfilled and has not been whittled down. No man shall be condemned except by the lawful judgment of his Peers or by the law of the land. Whenever there is a condemnation without a trial by jury, it is because Parliament has so willed. Wherever there is a trial by jury, the condemnation must be by a judgment which is both lawful and a judgment of the country. If his countrymen condemn a man and they exceed the law, he shall go free: if the law condemns him and nevertheless his countrymen acquit, he shall go free.

That is the basis of the amendment as proposed.

Senator Flynn: From which court was that opinion given, and when?

Hon. Mr. Basford: I have only the extract. I do not have the footnote.

Mr. D. H. Christie, Q.C., Associate Deputy Minister, Department of Justice: This is taken from the Hamlyn Lectures, 1956.

Hon. Mr. Basford: I do not have the reference to Lord Mansfield's judgment.

Senator Flynn: Who handed down this opinion?

Hon. Mr. Basford: Mr. Justice Devlin of the United Kingdom.

Senator Flynn: As I understand it, the purpose of the 1930 amendment was to restrict, to some extent, the principle that the jury is always right when it acquits. It is not always right when it arrives at a verdict of guilty, but apparently it is always right when it acquits. That is your point.

Hon. Mr. Basford: That is the point of the quotation.

Senator Flynn: We did away with that concept in 1930.

Hon. Mr. Basford: Yes, we did, apparently, for reasons which are undisclosed.

Senator Flynn: Undisclosed, yes, but they are quite obvious.

Hon. Mr. Basford: The 1930 amendment does not appear to have been used in the 46 years it was in effect.

Senator Flynn: Section 605 speaks of an appeal on a question of law, and the interpretation of a question of law has been in accordance with the opinion of Mr. Justice Devlin. There is no question of law unless the presiding judge makes an error in law.

Hon. Mr. Basford: I note other cases were discussed in previous committee hearings, and specifically where you discussed what was a question of law upon which no one can come to a conclusion. Also, I note that you raised the question of a hung jury, or a bought jury. Whether or not those are questions of law, I do not know.

Senator Flynn: Do you not feel it is rather illogical when a judge makes an error in law, the court of appeal would have the right to order a new trial, but where there is no error in law made by the judge, but there is in fact an error in law made by the jury, there is no possibility of the court of appeal ordering a new trial?

Hon. Mr. Basford: I think there should not be such a right, in accordance with the British practice which I just quoted.

Senator Flynn: So that the public is better protected when there is an error in law by the judge than when there is an error in law by a jury.

Hon. Mr. Basford: That would, of course, to some extent, depend upon your conception of the jury, and the whole belief in the jury system, it seems to me, has been that a jury of peers is a protection both to society and the innocent.

Senator Flynn: The purpose of the jury system, as it was originally conceived, was to protect the individual from intervention by the judiciary, which was controlled at the time by the executive branch. It was to prevent abuses by the executive branch through the judiciary. In other words, it was to prevent the king, or his officials, from intervening in trials. To prevent such intervention, the jury system came into being. Do you agree with that?

Hon. Mr. Basford: That, undoubtedly, was the purpose, or one of the purposes, for the origin of the jury system. It

seems to me important to preserve that concept in the law, and the perception of protection by the public that where someone elects trial by jury, he will in fact be condemned by the jury, and not by someone else.

Senator Flynn: But you do agree with me that the circumstances have changed, and that the original conception of the jury system does not apply in the same way today.

Hon. Mr. Basford: Undoubtedly, conditions have changed since the jury system . . .

Senator Flynn: Since the Magna Carta.

Hon. Mr. Basford: —was first instituted, but we seem to have done well in this country from 1867 to 1930 with the law as it then was, and from 1930 to 1976 without using the 1930 amendment to the law.

Senator Flynn: Inclusive.

Hon. Mr. Basford: The period from 1930 to 1976, of course, was a period of immense social change in this country. In all, we have gone over 100 years without this provision's being used.

Senator Flynn: You mentioned that you received representations from those wanting to retain the old conception of the jury system and refusing any intervention by a higher court, even if there is a manifest error on the part of the jury. Have you received representations from those who take the other view?

I have read a great many comments on the decision which forms the basis of the proposed amendment, and it seems to me that not everyone is in agreement with the amendment you are now proposing.

Hon. Mr. Basford: Yes. Mind you, I have not seen all of those representations because, of course, I did not introduce Bill C-71. Undoubtedly, since becoming the minister responsible, there have been representations both ways. I find that singularly true of all positions.

Senator Flynn: Perhaps, but I think it is rather important in this case, if the opinions are not generally in favour of the amendment, that the government, on the basis of only one case, should reflect a little longer and further about the validity of the proposed amendment and the whole jury system as want it in today's context.

Hon. Mr. Basford: I would agree with you that the law should not be changed, or that a Minister of Justice should act in response to public opinion surveys, or to correspondence, but I cannot accept your statement, on my experience, that the amendment is not generally approved. Certainly, the representations directed to me would run very much the other way, namely, that this amendment should be enacted.

Of course, I had nothing in my mind when the amendment was introduced because I was not the minister at the time, nor subsequently when a new trial was ordered in the *Morgentaler* case. I should point out to you that a great deal of mail has come to me, very articulate mail, letters separate and divorced from the issue of abortion, one way or the other, showing a very intelligent concern about what was happening to the jury system.

Senator Flynn: Do you not think what could harm the jury system in this country more than anything else would

be juries refusing to enforce the law, and that is quite possible.

Hon. Mr. Basford: It depends upon how you mean "enforce the law," because the jury is part of the law.

Senator Flynn: Apply the law.

Hon. Mr. Basford: The jury is part of the law, and its decision is part of the law.

I go back to what I said a moment ago, that we seemed to have survived in this country for 108 years, through a period of immense social change, without that being a problem in this country.

Senator Flynn: It could become a problem.

Senator Robichaud: Would it not be a good idea, Mr. Chairman, to have on record the reaction of the Canadian Bar Association?

The Chairman: If we have it.

Senator Robichaud: This is, following the judgment of the Supreme Court.

Senator Flynn: There was a reaction by the Association of Criminal Lawyers but I do not think there was an official position taken by the Canadian Bar Association.

Senator Neiman: No.

Hon. Mr. Basford: I am not aware, Senator Robichaud, of a formal position of the Canadian Bar Association.

Senator Flynn: There was one by the Association of Criminal Lawyers of Ontario favouring this.

Hon. Mr. Basford: I am not sure that that was a formal position. I think that was an expression by the president. However, I am not positive about that.

Senator Flynn: I know there was something said by them. I am wondering if you had secured an opinion from the members of the judiciary in general?

Hon. Mr. Basford: No.

Senator Flynn: It would appear to me from what I have heard that many many members of the courts have had some doubts about this amendment or about the problem which, as far as I am concerned, is related to this whole question: If we want to protect society, we have to continue giving the jury the right to decide on the facts but not, through the back door, give them the right to decide on the law.

Hon. Mr. Basford: I recognize that that is your position. I would take a different position.

Senator Flynn: You said you thought it was necessary, because of one case, to bring in this amendment. However, I would say in this particular case you have not demonstrated that there was an urgency about making the decision because you ordered a new trial in the way you have the power to do.

There is no rush about this matter. If there was any abuse by the courts of the discretion given by the present provision, you can always, as you did in this particular case, intervene and order a new trial.

Hon. Mr. Basford: No. I would not accept that, senator.

Senator Flynn: Well, the facts are there.

Hon. Mr. Basford: The bases upon which the Minister of Justice can order a new trial are rather limited and should be limited, and should be used with extraordinary caution.

Senator Flynn: Like the powers of the courts.

Hon. Mr. Basford: It would be quite wrong for the Minister of Justice to try and correct the law by ordering new trials all over the place. It is a very extraordinary remedy.

Senator Flynn: Agreed. You have had only one case, and you have used it in that particular case, so I would not say you have abused that power. As far as you are concerned, or even as far as your predecessors are concerned, since 1930 we have had only one case where the court has used this section, and you have used your discretion and ordered a new trial.

Hon. Mr. Basford: Yes, but I ordered a new trial on the basis of the decision of the Quebec Court of Appeal and its statement of law relative to the position of the defence of necessity. I would not want to accept your suggestion that the law should not be changed because if it is applied the wrong way it can be corrected by the Minister of Justice by ordering a new trial.

Senator Flynn: No, I am saying the government could have taken its time and examined the problem of the jury system in depth, in circumstances where you have an error in law by the jury, or where you have the equivalent of an error in law by the jury. I am just saying there was no rush to bring in this amendment. The whole problem could have been examined in depth.

We are going in one direction, which is protecting what you call the absolute discretion of the jury, but there is the other problem that may arise and some events have suggested that there was a real danger in this area, that the jury could refuse to apply the law simply because they did not believe in the law, or simply because of political circumstances.

You realize very well, of course, that if we give discretion to the jury in matters relating to the law, that you would have a different enforcement or application of the law in one region of the country from another. That is a real danger I would say, in this country. Maybe it is not a problem in the United Kingdom, I do not know, but in this country it is.

My suggestion is that we should delay the passage of this provision, and that the Department of Justice should deal with this problem in depth.

Senator Smith (Colchester): I would just say, by way of preface, that I doubt if there is anyone around here who is a stronger believer in the jury system than I am. I have relied upon it a great many times. Therefore, what I say does not in any way result from the fact that I have any distrust whatever of juries, except they are the same as the rest of us—they are subject to error.

With reference to the minister's quotation from Mr. Justice Devlin, it expresses what I have always thought to be one of the most satisfactory attitudes toward the jury. However, I do have to say that Mr. Justice Devlin was talking about a situation which does not, at this moment, apply here. As I understand the situation, and I do not pretend to have looked at it enough to be absolutely sure of what I am saying, it is defending the jury system in the law relating to appeals as it then existed in the U.K.

If we go back a little further in U.K. history, we see that at one time, there was not an appeal of any kind from the verdict of the jury. What the jury said, whether it was yes or no, no one could touch.

In fairly modern times, it became apparent to Parliament and, I suppose it must have been apparent to those interested in the administration of justice generally, that that no longer was a satisfactory state of affairs. Therefore, there was established a court of appeal to which there could be appeals from jury verdicts. Their jurisdiction to allow an appeal is certainly substantially limited, and they had no right to do what our code since 1930 has allowed our appeal courts to do—namely, substitute a verdict of guilty—and they have not that now, I agree.

It did become clearer, I submit, that the unrestricted acceptance of the jury verdict in the U.K. was not something which was in the best interest of the administration of justice in modern times. Therefore, one must read Mr. Justice Devlin's comments in the light that there was that recognition and that change.

It does seem that in 1930 our Parliament—and I should think it must have been with the knowledge and approbation of the administration of justice and the department and those interested in the administration of justice in Canada, and I suspect was not too far removed in time from the change in the U.K. when this movement from the absolute acceptance of the jury verdict took place—in 1930 Parliament said, "We should go a little further and give the appeal court the additional power to substitute a verdict of guilty in very special cases." So I do say that the principle of absolute acceptance of the jury verdict has been retreated from in the U.K., and certainly was retreated from here. Although I accept the fact that research does not indicate the reason for the change here, in my opinion it is impossible to make any assumption except the assumption that it was very seriously considered by the Minister of Justice of the time and by the Parliament of the time, because it is the sort of change in relation to juries which would never slip by without being noticed by someone. It must have been a considered decision by the minister and Parliament.

Moving from the question of juries for a moment, I would like, if I may, to make the point now which I think is rather important, that a law which has stood us in good stead for a substantial period of time ought not to be changed hurriedly upon the result of one case unless there is something so drastic and repugnant with respect to what the law could allow to happen that delay cannot be brooked at all. Also, it may well have been true—and it would have been true in my case until I thought about it—that lawyers who are accustomed to looking to juries would resent very much this change by the court of appeal as, of course, I did at first and, naturally, many others interested in the administration of justice would also think in this manner.

Perhaps sober second thought would indicate to us that things are not so bad as they seem, and unless there is some rather unusual pressing urgency about changing this section it appears to me worth taking a careful thorough second look at it. To put it bluntly, I suppose what I am saying is that it seems to me that what the public might feel about one case which can stir up a great deal of emotion is not necessarily a good reason for a change in the law—at least, not an immediate change while those emotional feelings are still very strong.

That is really the comment I would like to make with respect to the situation, and in making it I wish to empha-

size that I am a died-in-the-wool believer in the jury system who has relied upon it many, many times, sometimes with disappointment and sometimes with satisfaction.

Hon. Mr. Basford: In reply, senator, perhaps I can say three things. One is that you are making the assumption that in 1930 the amendment was brought forward—and there is no record of debate—after careful consideration by the Minister of Justice of the time. I believe that to be a correct assumption. One assumes that the Minister of Justice would have recommended changes in the law in 1930 only after careful consideration. The same assumption is true in 1975. When my predecessor made this recommendation to the government, and then to Parliament, he did so after careful consideration.

The second point is that you said that the law had stood us in good stead since that time. I cannot challenge that statement either, except to say that it is a part of the law which has not been used for 46 years. So I am not sure that it is true to say that it has stood us in good stead. It was introduced for some reason for which it has never been applied by a court of appeal, and a court of appeal, so far as we can find, has never found situations which needed this type of intervention. Through a period of depreciation, war, recovery and a period, as I say, of immense social change, courts of appeal, throughout that whole period, left this law unused. It would seem to me that that does not necessarily characterize that law as standing us in good stead, because it was never used.

Against that, to use Senator Flynn's words, valuable protection is, I think, a legitimate source of disquiet as to what this law did to the jury system. I believe that as a result of the comments of the Supreme Court of Canada it is valid and appropriate to now put this to Parliament and ask that this law be changed.

Senator Smith (Colchester): First, I might comment on the fact of whether or not it has been used. I suppose one might say, unless my recollection is wrong, that the power of the Minister of Justice to order a new trial has very rarely been used. Applying the same reasoning to that as you apply to this provision in the law, I suppose one could ask: What is the good of having it if it has only been used once in a very long time? Really, with great respect, I do not accept that as a valid argument for a change. May I suggest also that the very existence of this provision in the law may have avoided the circumstances which concerned those connected with the situation. In my opinion that is not something to be brushed too lightly aside.

I do not suggest for a moment—although my words may have been capable of such interpretation—that your predecessor or you have not given careful consideration to this problem. However, it is one thing to give careful consideration as it then appears to be in the climate in which the feelings of the public, or some portions of the public, run pretty high and over a relatively short period of time. It is another thing to give careful consideration over a sufficiently long time so that the circumstances which gave rise to the case itself, and the circumstances which gave rise to some strong feeling on the part of some members of the public, at least have subsided. My term "careful consideration" was directed toward that type of consideration, and that it should take place when the event is not too recent and at a time when the general surrounding climate would be more conducive to consideration and more free

from discharging considerations which are the subject of the case.

I am not saying that the Minister of Justice today, or his predecessor, was a little more subject to that unusual feeling than would I be, or anyone else. It is just part of the way we are constituted.

Reverting for a moment to the change in 1930, I have forgotten when the change in Britain was made, but...

Mr. Christie: 1907, I believe.

Senator Smith: This 1930 change came after the change in Britain, and while it did go a substantial step further than the British retreat of the absolute acceptance of the jury verdict, it was in the same direction. Again this is purely an assumption, but when I look at the arguments used at the time of the British change, and at the changes in Canada which have occurred within our lifetime after the British change, it is not unreasonable to assume that the same considerations that brought the U.K. as far as they did brought the Canadian government and Parliament to the further point which they reached in 1930.

Mr. Christie: May I say, Mr. Chairman, that I believe the legislation that was passed in the U.K. in 1907 gave no right of appeal to the Crown. My recollection is that it gave rights of appeal only to persons convicted of criminal offences.

Senator Smith: You are quite right.

The Chairman: Was the change in Canada made before or after the election of 1930?

Senator Flynn: Before. It was probably the last bill from Mr. Lapointe before the election of 1930. That is what I recall. On the question of assumption, I would say that in this case we do not have to make an assumption. We know the reason why the minister is presenting this amendment. It is one case. It cannot be anything else. We do not have to have any assumption.

Senator Neiman: Mr. Chairman, I have not had any experience whatever with jury trials, so I do not have any strong, preconceived notions or ideas in that regard. However, I believe that this type of amendment merely reinforces our belief in the jury system, and I think that people, as a result perhaps of this one example which received a lot of publicity and notoriety, became justly concerned about what could happen to our jury system.

At the same time, although, as Senator Flynn said, certain facts were admitted in this case, those facts were intermixed with questions of law, which were not properly dealt with. Therefore, it is a fair type of case which has to go back to be reconsidered.

The point of this section is that if an appeal against an acquittal is allowed, it has to go back and be considered by another jury. Another trial is ordered. There is essential protection. That is important.

Senator Flynn: No.

Senator Neiman: It still places it in the hands of a jury to decide the criminal liability of a person being charged. For my part, I agree with the amendment.

Senator Flynn: But you are criticizing the decision of the Supreme Court, and no one has suggested that the decision was wrong. You are now criticizing the decision of

the court. You say that because the court made an error, you think...

Senator Neiman: No, no, I am not.

Senator Flynn: That is exactly what you said.

Senator Neiman: I am not criticizing the decision of a court, but in every case we have we can go from a trial division, to a court of appeal, to the Supreme Court of Canada, and the decision can be turned around each time. But that is not to say I am criticizing one court at any particular level. I take for granted that they all base their decisions on how they see the law. But quite often the law is turned around in the court of appeal or by the Supreme Court of Canada.

Senator Flynn: It may be a wrong decision, but in this particular case the Supreme Court and the Quebec Court of Appeal decided there was no discussion as to the facts. The facts were admitted. It was only a question of asking, "Is or is not the defence in law available?", and the court of appeal and the Supreme Court said, "No."

Therefore, this is the proper case where we can use this, but if you are right in saying that the Supreme Court and the Quebec Court of Appeal were wrong because of some element of facts, then, of course, you have the recourse which has been granted to the person in question by the ordering of a new trial by the Minister of Justice. However, if every time you are not satisfied with a decision of a court, you bring in an amendment, you will be in for trouble.

Senator Neiman: In this case you are talking about a particular set of circumstances, where the accused admitted a very limited set of facts, on which

Senator Flynn: I do not mind that.

Senator Neiman:—legal interpretations could have been put. I think that in other circumstances, where the accused has not admitted anything, or it remains to be proved at the trial, the necessity for something such as this would not appear to be so obvious. We are dealing too much with this particular case.

Senator Flynn: That may be, but that is the point. The Appeal Court of Quebec could have ordered a new trial, and the Supreme Court could have said, "The court of appeal should have ordered a new trial, and therefore we order a new trial." The two appeal courts could have done that. They said there was no need, because there was nothing for the jury to decide in that; it was only a question of law. That was the decision of the two courts of appeal.

I would ask the minister whether it would not be a good thing to refer the whole problem—not only this particular problem, because I consider it only incidental and insufficient to justify an amendment—to the Law Reform Commission. I do not think the Law Reform Commission expressed any views on this problem or on any related question.

Hon. Mr. Basford: I do not believe they have. They are doing an immense amount of work in studying both criminal procedure and substantial criminal law. In my opinion, this is a decision that Parliament can make without further reference to the Law Reform Commission.

Senator Flynn: It seems to me, Mr. Chairman, that the minister has considered only one side of the question, and

that there are other views which should be examined. The Law Reform Commission would be in a good position to do that. There is no urgency about this amendment. It was used only once and it was corrected by the decision of the minister. So for the time being, if we were to retain that provision and look into the whole question . . .

Hon. Mr. Basford: Mr. Chairman, I want to take exception to the statement that it was corrected by the minister.

Senator Flynn: I withdraw those words. The problem does not remain.

Hon. Mr. Basford: But the ability to order a new trial or make a reference to the court of appeal of the minister under section 617 is not a method which has been used or which should be used . . .

Senator Flynn: No.

Hon. Mr. Basford: —to correct anomalies in the law. The minister does not use section 617 to correct what may appear to be wrong decisions of a court. That would be a quite improper use of that section. I would like that to be very carefully understood. I hope the honourable senator will not go away thinking that we do not need to change the law because, if it is used wrongly or apparently wrongly, it can be corrected by the minister. It cannot be and should not be.

Senator Flynn: I accept that, but my point is that the present circumstances suggest that there is no urgency in adopting this amendment. Because there are other questions related to it, I think this matter should be further considered by way of an in-depth study of all of the questions involved. There is no urgency. Nothing would happen tomorrow if we were to delete this clause from Bill C-71.

Hon. Mr. Basford: "Urgency" is a strong word. I submit that it is a matter of importance, for reasons stated by me and by Senator Neiman, that as a result of the comments by the Supreme Court of Canada—and I do not think anyone has said that the Supreme Court of Canada was wrong, and I am certainly not saying that it was wrong, because it was not the comments made by Mr. Justice Pigeon and the Chief Justice, brought home to many concerned people in this country the fact of how this law could operate and how it could be used to frustrate a jury decision. That has caused—and I think rightly so—very considerable disquiet amongst members of the public, totally unrelated to the abortion issue—I want to emphasize that—and amongst very careful, thoughtful people in the profession. For those reasons, I think it is important that this matter be dealt with.

You say nothing would happen if the Senate were to delete the clause. I am not sure what would happen in that event as between the two chambers of this Parliament.

Senator Flynn: Well, that is another problem. I do not agree with your conclusion being based on the judgment of the Supreme Court. Mr. Justice Pigeon made several comments about the relevant section, but he found that it could be used in this particular circumstance. The Supreme Court could have quashed the judgment of the Appeal Court of Quebec and ordered a new trial, but the majority decided that it was not the thing to do under the circumstances. They were not critical of the provision. The Supreme Court of Canada had the discretion to quash the decision of the court of appeal and order a new trial. That

is why I say there is no danger of this discretion being used improperly in the immediate future. In going in this direction, we turn our back to the very serious problem of a jury being, in the end, not only judges of the facts but judges of the law, the result of which would be a different application of the law in one region of this country as compared to others.

Senator Neiman: The essential point, Mr. Chairman, is that very often in the history of our jurisprudence, courts, at various levels, have made findings, arrived at decisions, based on the law as they saw it, and properly so. Cases have gone through to the Supreme Court of Canada, and beyond that in earlier days, and Parliament has subsequently come to the decision, based on the decisions made by the courts, that if that is the law, or was the law, then the law should be changed, for various reasons that were valid at the time.

In this case, courts have come to proper decisions, as they see them, based on the law as it is today—and this is what should have happened—and Parliament has decided that it wants to reinforce its belief in the jury system . . .

Senator Flynn: No one is objecting to that.

Senator Neiman: Yes, but I think that is simply what this clause does. It simply makes it clear that if a court of appeal decides that an acquittal by a jury should be set aside, Parliament wants to ensure that that case will be taken before another jury and heard again. Quite simply, that is the whole purpose of this amendment.

Senator Flynn: That is all, but it reinforces the possibility of a jury being judges of the law as well as judges of the facts. It goes in that direction. There is no doubt about that. You may be sentimental about juries, but I am not. I believe in the jury system, but I am not sentimental. I can see problems.

The minister has now introduced a bill for the protection of the public, and I am also interested in this aspect in relation to that bill.

I suggest there is no urgency to having this amendment adopted immediately. I should like to have considered opinions as to the related problems, the major one being a jury refusing to enforce the law when the facts are admitted. I think it is obvious what I am referring to. Taking the question of abortion, opinion on that question varies from one region to another. Therefore, there could be great difficulty in obtaining a conviction in some areas, whereas in other areas convictions could be very easily obtained.

Senator Neiman: That is true.

Hon. Mr. Basford: You have said you would like a further period of consideration and further study. It seems to me, with respect, that this is really a matter of policy and one's perception of the purpose and role of a jury, and we now have all of the facts and considerations upon which to make a decision one way or another.

Senator Flynn: A limited opinion.

Hon. Mr. Basford: A study by any appropriate body is not going to bring forward a whole lot of new facts upon which to make a judgment, I submit. This is a matter of one's perception of the law and the role of the various institutions within the law.

The Law Reform Commission, for example, could debate the policy issue for a year, but I do not think such a debate

would reveal any facts that are not now in our possession. The purpose of a study is to bring forward facts upon which you then make a policy decision. I think we have those facts.

Senator Flynn: You have only one set of facts.

Hon. Mr. Basford: As I say, this is a matter of policy as to one's regard or perception of the role of the various institutions within the whole judicial system.

Senator Flynn: But your conclusions can never be definite, Mr. Minister, I suggest to you. I know that that is a conclusion you have come to and I respect your views, although I disagree with them, and it is a question of policy. However, I suggest to you that your conclusions today are not necessarily definite, and that you could have a study which would convince you that perhaps another system could be found.

I was inclined to think, just looking at this particular problem, that possibly you could provide that on the first occasion a new trial should always be ordered but if, after a second trial, it appears that it is impossible to get the proper verdict, then the court could intervene. In this light, of course, I am thinking not necessarily of a second error in law by the judge, although that is quite possible, but what I would describe as an error in law by a jury.

Senator Laird: I have listened to this with great interest, Senator Smith, but I think I have listened to enough.

Senator Smith (Colchester): I can only hope that we will not inflict too much more restraint upon you, senator, but sometimes people have views which they think are worth expressing, even if others do not care to listen to them.

Senator Laird: I am listening.

Senator Smith (Colchester): I was only going to say that I was unaware—I say this without any desire to be difficult or controversial—that because a matter had become policy those who decide it should be policy were unwilling to consider the possibility or the necessity of varying or changing the policy as representations, to which they might give some weight, were put forward. I doubt if the minister meant to imply that was the situation.

Hon. Mr. Basford: No, I did not.

Senator Smith (Colchester): I didn't think so. So, the fact that it is policy does not mean to me any more than that the people who are responsible for making the initial decisions have concluded that this is the best course among the many alternatives they have considered; but until it becomes a final decision of Parliament, I should think it is open to discussion and, if the arguments are persuasive, then open to changes or variation to accommodate those arguments.

Hon. Mr. Basford: Of course, and I was not trying to imply the contrary. What I was saying is that what is involved here is one's perception of the various institutions within the criminal justice system. Of course, members of Parliament are in a position now, it seems to me, to put forward either this proposal or alternatives to it.

A study by some other body would not result in other alternatives coming forward because there are not a whole lot of new facts to be discovered. I think that is the purpose of a study—to bring forward facts upon which one's policy can then be determined. This involves an issue

of one's perception of the institutions within the legal system, and upon which there are no other unknown facts to be discovered by a year's consideration by the Law Reform Commission.

That is really what I was saying. I was not trying to imply that once the policy is determined by me or the government, it should not be debated.

Senator Smith (Colchester): I was sure you were not, Mr. Minister. However, I suppose there are other things than facts, in the sense of the word "facts" as you are using it now, which might from time to time have a persuasive influence upon anybody's mind, and there is the possibility that upon reflection the result of the particular course of action proposed might appear in a different light.

That is really the argument that was being made, and I am sure the minister would agree with me that sometimes in a particular set of circumstances a course of action might not only appear right but the only possible one, and then upon reflection, and upon the remoteness due to the time of those circumstances, a person with exactly the same facts in mind might come to a very different conclusion.

Hon. Mr. Basford: Undoubtedly we do that in the law all the time. That is why we change it all the time.

The Chairman: Does clause 75 carry?

Senator Flynn: No. I move, Mr. Chairman, that clause 75 be deleted and that the subsequent clauses be renumbered accordingly.

The Chairman: All in favour of the amendment? Opposed? The amendment is defeated.

Does clause 75 carry?

Senator Robichaud: On division.

Hon. Senators: Agreed.

The Chairman: There remains just one or two small items which I will ask Mr. du Plessis to explain to the committee.

Mr. du Plessis: At the committee's last meeting on Thursday, March 4th, there was some discussion regarding the French translation of the English word "abscond," as contained in the draft amendments to the French versions of clauses 39 and 59 that were before the committee.

Two words were in fact used in the draft amendments, "fuite" when "abscond" in French was used as a noun, and "s'esquiver" when "abscond" in French was used as a verb. In a letter from Mr. Jean Ste. Marie, of the Legislation Section, Department of Justice, which was read to the committee, it was explained why these words were preferable to the expression "absence non-justifié," which had been suggested at an earlier meeting of the committee. Although the committee concluded its consideration of Mr. Ste. Marie's views by agreeing to the use of these words, there were some reservations expressed by certain senators over the use of the French word "fuite," which literally translated into English means "a flight" or "running away."

Late yesterday afternoon, I received a telephone call from Senator Langlois, who also expressed concern over the use of the word "fuite," pointing out that, in his edition of Harrap's dictionary, the word "abscond" is translated in French as "se soustraire à la justice."

Perhaps I should point out to honourable senators that Senator Langlois explained to me yesterday that he would not be able to attend this morning's meeting, and he asked me to convey his concern over the translation.

In an effort to resolve these apparent terminological difficulties in the French text, I contacted Mr. Ste. Marie and suggested that one way of solving the problem might be to eliminate the noun "fuite," wherever it has been used in the amendments, and replace it with a form of the verb "s'esquiver." For example, in the heading on page 42, instead of "Fuite du prévenu," which has been suggested, we could say "prévenue qui s'esquive." The advantage of this approach is that only one word is used, "s'esquiver," and that one word is the word already used in other sections of the Code, notably in section 632 and in the new subsection 643(3) added by clause 76 of the present bill.

Mr. Ste. Marie agreed with this approach and revised drafts of the amendments to clauses 39 and 59 were prepared. These drafts are now available for the consideration of the committee. I would ask the committee clerk if he could pass them around.

Senator Flynn: My first reaction, Mr. Chairman, is that it is certainly an improvement over the word "fuite." I think that would cover the point. It means exactly the same thing as "absence non-justifié," mind you, but if it is the expression used somewhere else in the code, I would be prepared to support that.

The Chairman: Are the changes approved?

Senator Laird: By the way, it might interest you, Mr. Chairman, to recall that I mentioned the dictionary I use at home, le dictionnaire canadien. I checked the definition in there, and I am afraid it is not suitable for legal language.

The Chairman: Is it suitable for the committee to hear it?

Senator Laird: Le titre ce n'est que «lever le pied».

Senator Flynn: Lever les pieds.

The Chairman: Well, we have now heard it.

Senator Flynn: We have, we say «lever les pattes», to die, or when you die it is, «vous levez les pattes.»

Hon. Mr. Basford: I hope Senator Flynn will not regard it as improper if I do not, as a minister from British Columbia, join him in this debate on the French text.

The Chairman: Will a member of the committee move that the change be incorporated in the record at this point?

Senator Flynn: I so move.

(Text follows)

That the French version of Bill C-71 be amended

(a) by striking out lines 11 to 13 on page 27 and substituting the following:

"431.1 (1) Nonobstant la présente loi, lorsqu'un prévenu, inculpé conjointement ou non, s'esquive au cours de son procès,";

(b) by striking out line 31 on page 27 and substituting the following:

"prévenu du fait qu'il s'est esquivé." ; and

(c) by striking out lines 39 and 40 on page 27 and substituting the following:

"(4) Lorsque le prévenu qui s'est esquivé au cours de son procès ne comparait pas, alors que son procès se poursuit, son avocat"

(d) by striking out the heading immediately following line 22 on page 42 and substituting therefor the following:

"Prévenu qui s'esquive"

(e) by striking out lines 23 to 26 on page 42 and substituting the following:

"471.1 (1) Nonobstant la présente loi, lorsqu'un prévenu, inculpé conjointement ou non, s'esquive au cours de l'enquête préliminaire," ; and

(c) by striking out line 4 on page 43 and substituting the following:

"prévenu du fait qu'il s'est esquivé."

The Chairman: Does clause L, which is the short title carry?

Hon. Senators: Carried.

The Chairman: Does this title carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill as amended?

Hon. Senators: Agreed.

Senator Flynn: With reservations.

The Chairman: I will report the bill this afternoon. I wish to thank the minister for appearing before us today.

The committee continued *in camera*.



Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 36

TUESDAY, MARCH 16, 1976

First Proceedings on:

“The Subject matter of Bill C-83 intituled: ‘An Act
for the better protection of Canadian society
against perpetrators of violent and other crime’.”

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(19)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, 4th March, 1976:

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Langlois:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the subject-matter of the Bill C-83, intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime", in advance of the said Bill coming before the Senate, or any matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, March 16, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m., the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Flynn, Godfrey, Laird, Lang, Langlois, McIlraith, Neiman, Robichaud and Smith (*Colchester*). (11)

Present but not of the Committee: The Honourable Senator Haig.

In Attendance: Mr. R. L. du Plessis, Acting Law Clerk and Parliamentary Counsel.

The Committee commenced its examination of the subject-matter of Bill C-83, intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime".

The following witnesses were heard in explanation of the said subject-matter:

Mr. D. H. Christie, Associate Deputy Minister, Department of Justice;

Mr. Saul Froomkin, Q.C., Director, Criminal Law Section, Department of Justice;

Mr. Roberto Gualtieri, Co-ordinator, Gun Control Project, Ministry of the Solicitor General;

Mr. J. H. Hollies, Q.C. Departmental General, Counsel, Department of Justice.

Mr. R. B. Macauley, Legal Adviser, National Parole Board, Ministry of the Solicitor General, also attended the meeting.

At 4:40 p.m. the Committee adjourned until Tuesday, March 23, 1976.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 16, 1976

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m., to consider the subject matter of Bill C-83, an act for the better protection of Canadian society against perpetrators of violent and other crime.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, the committee has been asked to examine the subject matter of Bill C-83, an act for the better protection of Canadian society against perpetrators of violent and other crime, in advance of the said bill coming before the Senate.

It was decided at the last meeting of the committee to meet today to discuss the method of dealing with that order of reference. To assist us in that regard, we have Mr. D. H. Christie, Associate Deputy Minister, Department of Justice; Mr. R. B. Macauley, Legal Adviser, National Parole Board, Ministry of the Solicitor General; Mr. J. H. Hollies, Head, Legal Division, Department of Justice; Mr. Saul Froomkin, Q.C., Director, Criminal Law Section, Department of Justice; and Mr. Roberto Gualtieri, Coordinator, Gun Control Project, Ministry of the Solicitor General.

The bill contains a table of contents which sets out the subject matters covered by the proposed legislation. This is the first time I have seen such a table of contents, and I think it an excellent idea.

The first heading, "Descriptive cross-references", is non-controversial, but then we get to headings such as "fire-arms and other offensive weapons", "Prison Breach", "Invasion of Privacy—Interception of Communications", "Dangerous offenders", "Special Crime Inquiries", "Customs Tariff", "Parole Act", "Penitentiary Act" and "Prisons and Reformatories Act".

The purpose of this meeting is to decide how and where to begin our study. Should the committee educate itself first as to what the law proposes under the various heads? Personally, I think such a course would be a wise one for the committee, and the departmental officials can be of assistance to us in that regard. We could also begin, if it is the wish of the committee, by calling witnesses, although I think it would be far wiser for the committee to know what the proposed legislation entails before hearing witnesses. It is for the committee to decide which course we should follow. Also, we have to decide with what heading to begin our study and, as well, how long it will take to cover each item.

We have to remember that this bill is presently before the House of Commons. I asked the minister last week when he expects it to be referred to the committee of the other place, and it was his view then that it would be in the hands of the committee in about three weeks. It seems to me now that it might take a little longer. Bearing that in

mind, I am wondering what will happen if it is referred to the committee of the other house while we are still considering it. Will that create any problem? I have been told there will be no problem, but I do not know.

Senator Flynn: I think it would create a problem, Mr. Chairman.

The Chairman: I think it would, too.

Senator Laird: Frankly, so do I.

The Chairman: I understand that happened in the case of the bankruptcy legislation.

Senator Croll: As a matter of fact, Mr. Chairman, it has happened, and very often when the witnesses finished before the committee of the House of Commons, they then walked over here and gave their evidence. I cannot see where there would be any conflict if that were to happen.

Senator Godfrey: We are operating on the so-called "Hayden formula", are we not?

The Chairman: That is right.

Senator Godfrey: We are not officially considering the bill.

Senator Flynn: We are considering the subject matter of the bill.

Senator Godfrey: Yes, but not the bill.

The Chairman: It is an advance consideration of the subject matter of Bill C-83, but we are not restricted in any way. We can go through the bill clause by clause.

Mr. S. M. Froomkin, Q.C., Director, Criminal Law Section, Department of Justice: The only administrative problem that there might be, Mr. Chairman, is that there are limited numbers of administrative officials who are concerned with this particular bill who may be required to be in both places at the same time.

Senator Croll: There would be no problem in that respect.

Senator Laird: Frankly, I think there would be problems. Dealing with the bankruptcy legislation, the subject matter of the bankruptcy bill was referred to the Banking, Trade and Commerce Committee for advance study after receiving first reading in the House of Commons. It did not proceed further in the other place. We did a job on that in the sense that we went over it very thoroughly with witnesses, as a result of which we made recommendations which had the effect of emasculating the bill to the point where the government is going to withdraw it and start all over again.

In that case we performed a real service. I am apprehensive, however, as is Senator Flynn, obviously, as to wheth-

er we would be doing any service if both committees are dealing with the same problems contemporaneously thereby not giving the committee of the other place advance notice of how we feel so that minds can be changed.

Senator Flynn: I do not think the reference to the bankruptcy bill was to the one currently before Parliament, but to a previous bankruptcy bill that was studied simultaneously with the committee of the other place.

Unless the committees have joint conferences occasionally, it would only complicate matters to have both committees dealing with the same matters at the same time, and perhaps coming to different conclusions. That would only result in confrontation.

Senator Laird: That is right.

Senator Flynn: If there were to be joint conferences involving the members of both committees, I would have no objection. However, as has been pointed out by Senator Laird, if our recommendations go to the committee of the other place in advance of its study of the measure in question, then our recommendations can be taken into consideration, which would not be the case if both committees are studying the measure at the same time.

Senator Godfrey: I thought the whole principle of the "Hayden formula" was that the Senate had the time to get into a subject rather smartly ahead of the House of Commons, bearing in mind the workloads of both houses, and that we should give such studies priority and bring down our recommendations so that the appropriate House of Commons committee can consider them.

It may be that if we do not move soon enough, and so on, our recommendations will be too late in coming down. I am sure members of the committee will remember the Foreign Investment Review bill which I introduced in the Senate. The Senate committee made some 16 recommendations with respect to that bill, 11 of which were adopted by the committee of the other place, and the House of Commons committee was rather in favour of our doing most of the homework because we had the time, and they could then look at our recommendations and make up their minds. I am quite sure that this particular measure will not be referred to the House of Commons committee for quite some time.

The Chairman: The chairman of the House of Commons committee spoke to me about this matter, at which time he told me he would be preparing a list of witnesses this week, which indicates to me that that committee is going to start by hearing witnesses. We could follow another course, if it is the wish of the committee.

Senator Croll: I do not think we should worry too much about what the House of Commons is doing. One of our functions here is to take our own approach. We have no assurances that either house will be in agreement with what the other one does. We have to continue on our own course; that is our function. The only question before us is that of accommodating the witnesses. That can be solved by simply conferring with the chairman of the House of Commons committee to determine when that committee will be hearing from the various witnesses, and then we can schedule our hearings accordingly. If we come with different answers, those are our answers; we may modify them and the other place may modify them, but there is nothing we should be concerned about as to what they do in the other place. There is enough in the bill to keep both

us and them busy, and we can use witnesses here and there at any time without any difficulty. That is my suggestion.

The Chairman: I must point out that the Minister of Justice told me the government was very anxious to have our views on this.

Senator Flynn: There is no doubt about that, but does he suggest that we will have the same views if we study the bill after the other place? Will we adopt the same fighting attitude as Senator Croll is suggesting we should?

Senator Croll: I just beat you to it. That is usually your attitude.

Senator Flynn: As you say, it is usually my attitude, not yours.

Senator Neiman: I think we should proceed with our own investigation in general terms first, before calling witnesses. Perhaps it would be helpful if we look down this list of subject matters and concentrate on those that will be most contentious and important, where we can make the greatest contribution. We should start with those, rather than just taking them all together.

Senator Flynn: I agree with that.

The Chairman: Start with explanations of those by the responsible officials?

Senator Neiman: Yes.

The Chairman: Before we think of witnesses?

Senator Neiman: That is right.

Senator Laird: If we can do it fast enough I would go along with Senator Godfrey. What I am apprehensive of is that, if it all happens almost contemporaneously it will lose its impact. I agree with Senator Godfrey, if we can get in there fast enough.

Senator Godfrey: We could bring out a series of reports. We do not have to wait until the very end. We can bring them out as we go along.

The Chairman: If we can arrange two meetings a week we may be five weeks ahead of the other place at the rate they are going.

Senator Laird: You would have to speak to Senator Bourget about having two meetings a week.

The Chairman: I am prepared to do that.

Senator Flynn: Would that be on Tuesdays and Thursdays?

The Chairman: Tuesdays and Thursdays, or Tuesdays and Wednesdays if we make a change in Senate meetings on Wednesdays.

Senator Croll: We should stay away from Wednesday morning.

The Chairman: I am not thinking of meeting at the same time as caucus. There was a discussion of some change in the meeting arrangements for the Senate.

Senator Flynn: If it is a decision of the Liberal caucus, Senator Croll, there is nothing we can do about it!

Mr. D. H. Christie, Q.C. Associate Deputy Minister, Department of Justice: Unless I misunderstood Senator

Neiman, the essence of her proposal is that you should have senior officials of the Department of Justice here available to discuss the bill on a clause-by-clause basis.

The Chairman: No.

Mr. Christie: Did I misunderstand?

Senator Neiman: Perhaps I did not explain myself very well.

Mr. Christie: You spoke about officials being here.

The Chairman: Officials who could give us evidence on the particular section we are discussing.

Senator Godfrey: The particular part.

Senator Laird: Gun control, for example.

Senator Godfrey: Or penitentiaries.

Mr. Christie: The fact of the matter is that there is only a handful of people who can really speak with authority on gun control; two who can be sitting on my right now. I would caution the committee against getting into a position where you expect to have here officials who are really knowledgeable and can give responsible answers, because if the same officials are required before the Standing Committee on Justice and Legal Affairs in the other place, I am afraid that is where they will be. You are much more experienced and knowledgeable than I am, but I just warn you that there are only so many top people available to testify from the official side.

Senator Laird: Let us suppose we pick out one topic—just for example, parole. One of the gentlemen is an expert on that and is capable of speaking authoritatively. Would he be required to be present at a House of Commons committee meeting, or would he be available to discuss parole if we were dealing with that on a specific day?

Senator Godfrey: They may be discussing gun control in the House of Commons committee.

Mr. Christie: Obviously that is possible. Perhaps I should not speak of parole, because that is not our bailiwick. Perhaps Mr. Hollies could speak on that.

Senator Croll: Perhaps the two chairmen could get together, then one can say, "What are you going to deal with? We will deal with this. We have to divide these civil servants between us." The former premier of Nova Scotia tells me that there are 381,000 civil servants. Cannot we have a couple to ourselves?

Senator Laird: They may not know enough.

The Chairman: Senator Croll, we are here, not because we chose to make an advance study of this subject matter, but at the specific request of the Minister of Justice.

Senator Neiman: I think we can work out a timetable.

Senator Flynn: I agree with Senator Neiman that at this time, until the next meeting, we should pick on the most controversial matters in the bill. I am thinking, for example, of firearms and invasion of privacy. There may be others.

Senator Neiman: Parole.

Senator Flynn: Parole, maybe. However, I am not sure that the long title of the bill adequately covers the whole field. I would say it does, but that is something else. If we

start with controversial matters we could perhaps do a good job before the committee of the other place meets.

The Chairman: I think so.

Senator Flynn: When that committee meets we can decide what to do. That would avoid the problem of having officials coming from one side of the building to the other. If we were to do this, I think it would be useful.

The Chairman: I can, and will, keep in touch with the chairman of the House of Commons committee; but that will not be necessary, I am sure, for the next three or four weeks, in any event. Perhaps Mr. Hollies wishes to say something.

Mr. J. H. Hollies, Q.C., Departmental Counsel, Ministry of the Solicitor General: In relation to the matters previously raised, when we come to parole Mr. Macauley has a more intimate and more detailed knowledge of it than I have. However, I think either one of us could perhaps satisfy the committee in general terms, and perhaps even in more specific terms. When it comes to the subject of prisons, reformatories and penitentiaries, I do not want to sound presumptuous, but I think I am the person best qualified to appear before the House of Commons committee or before the Senate committee on that. If I were, for example, before the Standing Committee on Justice and Legal Affairs in the other place, I might be there on prisons and reformatories, whereas at that time you might want to discuss penitentiaries. I could not split myself. There are not necessarily two people available on every topic.

The Chairman: We will bear that in mind, and if necessary pass a resolution to split you!

Mr. Hollies: I must see my psychiatrist about that!

The Chairman: What subject matter does the committee want to begin with?

Senator Croll: What about customs tariffs? I have just looked at page 53 and you could pass that in five minutes.

The Chairman: The trouble is, we have no authority to pass anything yet because the bill is not formally before us.

Senator Neiman: Perhaps we should start with firearms, because that is the longest, and, I think, it will be the most contentious in many ways.

Senator Godfrey: The subject of firearms has been before the Senate in the last two or three years in relation to a private bill. Maybe that would be the best subject to start with.

Senator Flynn: I would suggest that the second could be invasion of privacy. We want to deal with it before the other place.

Senator Laird: We have dealt with it once.

The Chairman: Does the committee agree that we start with "Firearms and other offensive weapons," and that we will then go on to "invasion of privacy"?

Hon. Senators: Agreed.

The Chairman: Is it agreed that we begin by asking the responsible officials to outline what the bill proposes?

Senator Flynn: Yes.

Hon. Senators: Agreed.

Mr. Christie: I take it, Mr. Chairman, that what the committee would like is a comprehensive and descriptive explanation of what is intended in relation to the existing law.

The Chairman: Yes.

Mr. Christie: I think the best person to do that is Mr. Froomkin. Mr. Froomkin is with the Department of Justice.

The Chairman: He is the Director, Criminal Law Section, Department of Justice.

Mr. Christie: Mr. Froomkin and Mr. Gualtieri—it is really six of one and half a dozen of the other—have both worked very hard on this for many many weeks. Certainly, between the two of them, you have the most knowledgeable people on the civil service side in relation to what is proposed in Bill C-83 vis-à-vis gun control.

The Chairman: Mr. Froomkin, would you begin by outlining the subject matter under the heading of "Firearms and other offensive weapons"?

Mr. Froomkin: Mr. Chairman, honourable senators, as I understand it, we are to attempt to assist you by giving you in broad outlines what the gun legislation is intended to cover, without being specific, clause by clause, unless it is necessary.

The Chairman: And by explaining the change from the existing law.

Mr. Froomkin: Yes, I will attempt to. Firstly, I should say, as far as the estimates are concerned, that there are approximately 11 million firearms in the country. I can break it down in rough terms, if you are interested. There are approximately 700,000 hand guns, 6,650,000 rifles and 3,800,000 shotguns. They are owned by approximately two million persons.

In 1974 there were approximately 1,467 deaths caused by firearms, of which over 1,000 were suicides.

Senator Robichaud: Would you repeat the first figure?

Mr. Froomkin: The figures I have are: 1,021 suicides, which is up 28 per cent from 1970; 269 homicides, up 40 per cent from 1970; 122 accidental; 47 undetermined; and 8 legal. I take it that "legal" means that someone was killed by a policeman in the lawful course of his duty.

Senator Flynn: That is for one year?

Mr. Froomkin: That is for the year 1974. Of the 1,021 suicides, one-third of all the suicides were caused by firearms in 1974. Half of all homicides in 1974 were caused by firearms.

Senator Croll: Do you have a breakdown in relation to sex?

Mr. Froomkin: We do not have the statistics as they relate to male or female.

Senator Flynn: You say that there were only 269 homicides?

Mr. Froomkin: Yes, in 1974, caused by firearms; they accounted for half of all homicides. Therefore, roughly, there were about 500 homicides in 1974.

The shortcomings in the present legislation, in general terms, are as follows. The present legislation or lack of it, permits unfit persons to possess firearms. It permits persons, without legitimate reason, or use for them, to have restricted weapons. It does not provide adequate measures against careless use, handling or storage. It does not attempt to reduce availability by curbing the ease of acquisition by purchase or otherwise.

The first general category that I think it might be appropriate to deal with is that of licensing. At present, as you are all aware, to possess any kind of firearm there is no requirement for a licence, which means that anyone who is mentally unstable, homicidal, can go and buy a shotgun or rifle, or any number of them, without showing that he is fit, mentally or in any other way, or that he has any beneficial or legitimate use for it.

Senator Laird: But that is not true of hand guns?

Mr. Froomkin: It is not true of hand guns.

Senator Godfrey: When you talk about firearms, you are not talking about hand guns?

Mr. Froomkin: I said that right now there is no requirement to have a licence for any firearms. I went on to say that with respect to long guns anyone who is mentally unstable can go in and buy as many long guns as he wants—and by that I mean rifles, shotguns, or whatever he likes.

Senator Godfrey: You said there is no requirement on firearms but there is on hand guns?

Mr. Froomkin: Not a requirement to have a licence. One gets a registration certificate for a hand gun and then a permit to carry or a permit to have it in a place, other than a business or residence.

Senator Robichaud: That is provincially controlled though. It is under the Criminal Code.

Mr. Froomkin: It is under the Criminal Code.

Senator Robichaud: But controlled by the provinces, is it not?

Mr. Froomkin: The Commissioner of the RCMP issues the registration certificates.

Senator Robichaud: Then they do that for one province. One person, in Ontario for instance, could have a registration to carry a firearm or a hand weapon in that province but not outside that province.

Mr. Froomkin: The permits to carry are generally restricted; they have conditions imposed on them.

Senator Robichaud: They are limited to one province.

Mr. Froomkin: Generally speaking, unless, for example, someone is competing in competitions. Say, he is a target shooter, an Olympic shooter, a PanAm Games shooter, he could get a permit to carry from his residence to the place of the competition in another province.

Senator Croll: Would a truck driver, who drives long distances and feels he needs a gun, be permitted to have a gun under similar circumstances?

Senator Robichaud: Not a hand gun.

Mr. Froomkin: If, in fact, he can convince the registrar that he has a need, for example, for protection of life and property, under the present legislation he could get a permit to carry, depending upon the type of business he is involved in.

Mr. Christie: Just one point, if you do not mind my interjecting.

The Chairman: No, go ahead; we want clarification.

Mr. Christie: It is an offence under the existing law. Section 88(2) of the Criminal Code states:

Every one who sells, barter, gives, lends, transfers or delivers any firearm . . . to a person he knows or has good reasons to believe (a) is of unsound mind,

Senator Laird: By the way, to get another thing clear, when you use the expression "restricted" you mean hand gun?

Mr. Froomkin: Yes, under the present legislation.

Senator Flynn: Only hand guns?

Mr. Gualtieri: It also includes fully automatic weapons.

Mr. Froomkin: Which is going to be changed under the proposed legislation.

Mr. Gualtieri: There is a third weapon which was restricted by Order in Council, the M-1 semi-automatic rifle. It was restricted about a year ago.

Mr. Christie: It was about eight months.

The Chairman: Before you continue, Mr. Froomkin, would you explain to me how you differentiate between licensing and registration?

Mr. Froomkin: With licensing, you are licensing the person; with registration, you are talking about the firearm itself. That is the distinction. That is a proper question, because many people today are confusing registration and licensing. The plan does not propose to register all firearms. It proposes to license all those who wish to possess firearms of any type, and ammunition.

Senator Robichaud: To clarify a point, is it possible for one individual to have a registered hand gun in Ontario and Quebec, but be found, in another province, say, Saskatchewan, illegally in possession of a weapon?

Mr. Froomkin: Yes.

Senator Robichaud: That is possible under current legislation?

Mr. Froomkin: Yes. The permit to carry has attached to it certain conditions. Very often it is restricted to the place of business, residence, or to an authorized gun club, for example. If you are found with that hand gun in any other place, it is an offence under the present legislation.

Senator Robichaud: And these hand guns are registered at the RCMP detachment?

Mr. Froomkin: Generally speaking, yes.

Senator Flynn: Is there no jurisdiction on that? Does the province have something to do with either the registration or the enforcement of the federal legislation?

Mr. Froomkin: Under the present legislation?

Senator Flynn: Yes.

Mr. Froomkin: It is delegated, generally, by the commissioner to registrars of firearms.

Senator Flynn: In Quebec, if someone wanted to have a revolver, he must apply to the provincial police rather than the RCMP.

Mr. Christie: The answer, Senator Flynn, is that it is difficult to explain. I do not pretend to be able to explain it. There is a possibility of getting a licence under either federal or provincial authority, vis-à-vis what are now known as restricted weapons.

Senator Flynn: Is it true of all the provinces?

Mr. Froomkin: Yes. What happens now, as I understand it, is that if you have a restricted weapon, you must get a registration certificate for it. That allows you to keep it at home or at your place of business. If you wish to have it anywhere else, you must get a permit under section 97 of the Code. That is issued by the commissioner, or by the person expressly authorized by him to issue permits. That could be delegated to a provincial authority, or to an RCMP officer, or to the attorney general of a province.

Senator Laird: Or even to a municipal police authority. I have done it myself.

Mr. Froomkin: It is delegated either by the commissioner or the attorney general under the present section 97 of the Code.

Senator McIlraith: Before you leave that point, is there not also, in the provincial field, purely provincial legislation dealing with the carrying of rifles and shotguns? I am not clear whether it is on crown land, but I know there are situations in Quebec where one is not permitted to carry rifles or guns. It is provincially controlled; it is a provincial matter.

Mr. Froomkin: There are a number of acts whereby the use and possession of firearms is in fact restricted. For example, in Newfoundland everyone who wants to have a firearm or ammunition must have a licence, which is the kind of legislation we are talking about. That legislation in Newfoundland has been around for some while now. Everyone has to have a licence there. So that, depending upon the province, there are various types of hunting legislation. For example, in many provinces, under the cemeteries act, it is an offence to fire a firearm in a cemetery unless it is during a military funeral. So, depending upon the province, there is some legislation dealing with firearms.

Senator Croll: The Newfoundland legislation is more restrictive than it is in the rest of Canada.

Mr. Froomkin: Yes, sir.

Senator Croll: Has it indicated any results? Does it help?

Mr. Froomkin: My understanding of the statistics is that the rate of firearm-related incidents is lower per capita in Newfoundland than in the rest of Canada.

Mr. Gualtieri: The rate of firearm homicides is lower.

Mr. Froomkin: Yes, that is right.

Senator Robichaud: I have heard the expression "fit persons." Who would be the judge as to whether one is fit or unfit?

Mr. Froomkin: To answer your question, sir, the way the plan is proposed, the applicant will fill out an application form, which will be prescribed by regulations. He has then to obtain two guarantors who will certify that they have known the applicant for at least two years and they know of no reason why he is unfit to possess a firearm. Once those documents are submitted to the licensing officer or local registrar, with such other documentation as may be required, various police checks will be made. If there is anything to indicate, based upon criteria to be fixed by regulations, that the man is unfit, the issuance of a licence will be refused, and he has a right of appeal. The regulations will prescribe the areas of concern. I expect they will include such things as a history of violent behaviour, of mental instability, of alcohol or drug abuse, and so on. That will be spelled out in the regulations, so that the guarantors will know what the criteria are for unfitness.

Senator Flynn: The present system of restricted firearms is about the same, except that you do not require a signature. They go to see several people and make inquiries.

Mr. Froomkin: The RCMP make investigations, yes.

Senator Robichaud: Then everyone who owns a firearm will have an RCMP file?

Mr. Froomkin: Not an RCMP file. There will be a licensing file, and your application will be on it; also the certificates of your guarantors. There will be no police file.

Senator Robichaud: Suppose they find a person is unfit to possess a firearm. They have to express their reasons, and they should be filed.

Mr. Froomkin: That will be in the licence application file—the reasons given for refusal, which will be transmitted to the applicant, who then has the right to appeal that decision.

Senator Robichaud: An appeal to where?

Mr. Froomkin: To a judge of the country court.

Senator Smith (Colchester): Am I to assume that this means the creation of two million files forthwith, if all the present owners are to be dealt with?

Mr. Gualtieri: It is perhaps misleading to talk about the creation of a file. It is true there will be a register kept of all persons with a licence; but I do not think one would call it a "file," because basically it will have just the name and address and whatever information is necessary for a renewal notice to be sent out to the licensee.

Senator Croll: When you get a driving permit, it is the same thing: it is not a file; it is a record.

Mr. Gualtieri: Yes. I should point out that although the RCMP is charged with the administration of the proposed licensing scheme, they are not going to treat it as part of their police function in CPIC, the Central Police Information Centre. They will separate that criminal aspect of their operations from the licensing system, and a separate computer centre will be set up to deal with that. I think it makes sense, when we are dealing with lawful owners of firearms, not to put them in a position where they feel they have their name recorded on a police computer.

Senator Flynn: That will be another record. Each individual has probably 10 records here and there, such as income tax, social insurance, driving, and so on.

Mr. Christie: In order that honourable senators are not misled in any way, Senator Smith has put his finger on a point. We do not know whether it will be two million, three million or four million. We just do not know how many Canadians will be put through this process.

Senator Smith (Colchester): In any event, it will be as much as two million, I gather.

Mr. Christie: That is a minimum figure.

Senator Smith (Colchester): Whether it is a file, register or licence bureau, if we are going to deal with all the present owners, we will have several million investigations and record making processes if we are going to make every present owner do what is suggested.

Mr. Froomkin: That is correct, senator.

Mr. Gualtieri: If I may, I should like to comment on the use of one word, which is a delicate one, that being "investigation." I do not believe at the moment it is the intention to conduct an actual background investigation into each applicant. Such a course would be extremely time consuming and costly. At the moment, it is envisaged that the decisions on applications will be taken on the basis of the information provided in the application, together with the certification of the guarantor, plus the criminal records checks. The CPIC check, which is a computer check, takes a matter of seconds; a local record check might take a little more time. Our estimate is something in the order of four minutes per person. Also, where required and where records are available, a check will be made at the provincial level. Most licensing officers will then end their search for information at that point and, if the information is satisfactory, order the issuance of a licence.

Senator Croll: Subject to charge?

Mr. Gualtieri: Yes, there will be a charge, senator. If information turns up which causes doubt as to whether or not the applicant is fit, then the licensing officer may, on an exceptional basis, undertake a background investigation. I would regard such investigation as being extremely rare. In fact, they will have to be kept rare if costs are not going to balloon out of all proportion.

Senator Croll: Will there be an affidavit involved?

Mr. Froomkin: There will be a statutory declaration, I assume, or certification, with respect to the guarantor. It will probably be a statutory declaration. That, again, has to be prescribed by the regulations, which we are presently working on.

Senator Flynn: Will there be one application for each firearm?

Mr. Froomkin: This will be a licence to own firearms. Once being licensed, you could own a thousand firearms. As long as the holder demonstrates that he is not unfit to possess firearms, then he need only have the one licence.

Senator Neiman: I am just wondering how long this process might take from the time of filing an application to being issued a licence. From what you say, once the individual has made application, he would then have to obtain his guarantors and get into the business of a statutory declaration, which has to be sworn by a notary or a lawyer. What is the time lag involved? It would appear to be a fairly lengthy procedure.

Mr. Froomkin: Between the application and the certification by the guarantors being received by the licensing officer, we expect a time lag of approximately four weeks.

Senator Neiman: So that no one could reasonably expect to be empowered to own a firearm within four weeks of making application?

Mr. Froomkin: Generally speaking, that is correct. That is an added benefit, in that many people requested a cooling-off period. This, in fact, whether we like it or not, is a built-in cooling-off period.

Mr. Christie: There is no possibility of this operation being put into effect simultaneously on a nationwide basis. The machinery to do so would be far too cumbersome and expensive, and, at the end of the road, probably quite clumsy. Perhaps Mr. Gaultieri can speak to that.

Mr. Gaultieri: There will be a phasing-in period, the precise mechanics of which are still under consideration. One method is to start with new purchasers of firearms and then the purchasers of ammunition, following which we could then perhaps start to pick up existing owners on an alphabetical basis. That is one alternative.

An alternative—and in many respects this is the preferred method—is to divide the country into three more or less equal regions in terms of population and gun ownership. Ontario would form one region, and we would license the whole of Ontario during a certain year. That has the advantage of minimizing the enforcement problems. If we implemented the legislation on the basis of new owners and the purchasers of ammunition, then the police would be put into an extremely awkward position in terms of enforcement. For example, an individual asked by a police officer to produce his licence could say that it is an old gun, but in fact he may have bought it just a short time prior to being stopped. In any event, Ontario would be one region; Quebec and the Atlantic provinces would be the second; and Western Canada and the Territories would be the third. At the moment, that seems to be the preferred avenue of implementation.

Senator Neiman: Have you thought about the possibility that a member of a given household may be unfit to possess a firearm? Bearing in mind the two fairly recent incidents involving shootings in Ontario high schools, one here in Ottawa and the other in Brampton, have you thought about putting anything in the applications to cover the possibility that there might be someone within the immediate family of the applicant who would be unfit to have a firearm readily available?

M. Froomkin: The bill would provide a new offence dealing with the careless storage of firearms. There is a specific proposal to deal with that very problem.

Senator Laird: Such a provision would perhaps have avoided the tragic incident in Dresden over the weekend where one child got hold of a gun and shot his infant brother.

M. Froomkin: One would hope so, senator.

Senator Flynn: In that case, the father would be charged.

Senator Laird: Yes.

Mr. Froomkin: If the public is going to be aware of the fact that it is an offence not to store one's firearms in a

proper and careful way, then hopefully we can avoid some of these tragic incidents.

Senator Croll: I do not believe my question has been answered. I asked the question as to how the department would deal with those already in possession of firearms.

Mr. Froomkin: I thought Mr. Gaultieri dealt with that. Assuming that the country is going to be divided into three main regions, all persons who possess, or wish to possess, firearms or ammunition, will have to be licensed, and it will be phased in over a period of time. The whole plan is expected to be phased in nationwide over a period of three years.

Senator McIlraith: Is there anything in the legislation to deal with those cases where a person is properly licensed and, because of some domestic situation or some other reason, it becomes apparent that the availability of firearms should be curtailed?

Mr. Froomkin: The bill would create a new offence to solve the very serious problem of domestic disputes. Under the present law, if a policeman walks into a domestic situation where the husband and wife are at each other's throats and he sees firearms, he can do nothing. He must return to the police station and obtain a warrant to search and seize, and by the time he gets back to execute the warrant it may be too late.

Under the proposed legislation, a police officer finding himself in that situation—if it is obvious that there is a problem and it is not practical to get a warrant—can search and seize the weapons right there and then. I think that is a big step towards solving that very serious problem.

Senator Godfrey: Going back to the question raised by Senator Neiman in relation to storage of firearms in the household, is there any kind of definition as to what proper storage would be? Do the firearms have to be put under lock and key, or what is entailed?

Mr. Gaultieri: That would be a matter for judicial interpretation, I believe, as to what constitutes safe handling and storage of firearms. One notion that I think is a possibility here is perhaps to issue some type of interpretative bulletin, as we have under, say, the Income Tax Act. If this is a crazy notion, please correct me. Under the Income Tax Act and under, for example, the anti-inflation act, there are a number of interpretative bulletins, which have no standing in law but which are useful to persons in trying to carry out the intent of the law. I thought that, of safe handling and storage, perhaps in co-operation with the gun clubs and other responsible users, we might develop some standards and publicize these widely, which would then be useful to persons in trying to avoid prosecution under that article.

Mr. Froomkin: The proposed provision in clause 99(2):

Every one, who without lawful excuse, uses, carries, handles or stores any firearm or ammunition in a careless manner or without taking reasonable precautions for the safety of other persons

(a) is guilty of an indictable offence and is liable to imprisonment for five years, or

(b) is guilty of an offence punishable on summary conviction.

Senator Croll: I heard you say it will probably take us three years to cover the country.

Mr. Froomkin: Yes, sir.

Senator Croll: That will be a great disappointment to the people of this country who are looking for something far quicker than three years. It strikes me as being an unduly long time. However, I do not know the answer to these things.

Mr. Christie: Senator, you must appreciate that we have no real appreciation or understanding of the magnitude of the existence of so-called long guns. By "long guns" I am referring to .22 rifles, shotguns and .303 rifles. I think the figure used earlier today was ten million to twelve million. There may be fifteen million. There may be five million Canadians involved. We simply do not know.

Senator Croll: I understand what you say, but you have got to get that across to the public. They are not going to take lightly to it. I do not know how you will get it across.

Senator Flynn: Those who want to have the law enforced quickly will at least be happier with the new law than with no law at all.

Senator Laird: Exactly.

Senator Neiman: In my earlier question I was thinking of the situation where a man might apply for a licence knowing that one of his sons was highly unstable, or had been on drugs, or was an alcoholic, and he was having problems with him. That man nevertheless goes ahead and purchases a firearm and keeps it in the house. He might keep it fairly safe, but a teenager could get at it. Is consideration to be given to that element of irresponsibility on the part of any applicant who purchases a gun and keeps it within easy access of someone like that?

Mr. Froomkin: The clause says "without taking reasonable precautions for the safety of others". We would have to rely upon judicial interpretation of what "reasonable precautions" and "safety" mean. Obviously, if you leave them lying around, that is not taking reasonable precautions. If a man puts them in a cupboard, locks the cupboard, but the son breaks in, I am not privy to what a court might say about that.

Senator Croll: Each case will be assessed on its own merits.

Senator Smith (Colchester): We have heard about the proportion of crimes related to the use of firearms. Is there any breakdown between those crimes related to the use of so-called hand guns or short guns, on the one hand, and so-called long guns, on the other?

Mr. Froomkin: Yes, sir. In 1974 there were 186 murders caused by long guns, broken down to rifles 128 and shot guns 58. They made up 68 per cent of the homicides in 1974. With hand guns there were 71 murders, which made up 26 per cent of the homicides. For "unknown" the figure is 15, making up 6 per cent. Of all the homicides caused by firearms in 1974, 68 per cent were related to long guns, which is shot guns and rifles.

Senator Smith (Colchester): Are you using the word "homicide" in the sense of something culpable?

Mr. Froomkin: Yes, murder, culpable homicide.

Senator Croll: What about what are referred to as "Saturday night specials"?

Mr. Froomkin: Hand guns, yes.

Senator Croll: For hand guns what is the percentage?

Mr. Froomkin: That is 26 per cent.

Senator Croll: And the rest?

Mr. Froomkin: Six per cent were in the "unknown" category.

Senator Croll: Whatever that may be.

Mr. Froomkin: I should say that the "Saturday night special" would form part of the hand gun category. "Saturday night special" is really a colloquialism for a very cheap hand gun.

Mr. Christie: That is right; "Saturday night special" is an Americanism.

Senator Croll: It is a term.

Mr. Christie: It does not really mean very much.

Senator Croll: Except that it shoots.

Mr. Christie: It means it is a cheap hand gun, but it is still nothing but a hand gun, perhaps with a little less chrome on it than the more expensive guns. Do not be misled by the phrase "Saturday night special," because it certainly did not originate in this country and it does not have any real meaning.

Mr. Gualtieri: Since we are on the question of statistics, honourable senators might be interested in some figures I dug out this morning on the proportion of homicides accounted for by various kinds of guns. One of the interesting things is that we have had hand gun controls in Canada for a number of years and, by and large, the long gun has been totally uncontrolled. In the United States, of course, the controls are much more haphazard and there are many problems because of conflicts of jurisdiction and so on. In the United States, hand guns account for 76 per cent of murders, whereas in Canada the figure is 26 per cent.

Senator Flynn: That might be the result of the new legislation, which would now shift the percentage to hand guns.

Mr. Gualtieri: Even in the case of robbery there is a significant difference between the figures. In the United States, 96 per cent of armed robbery takes place with hand guns. In Canada, 65 per cent of armed robbery takes place with hand guns. It is still a high figure in Canada, but nonetheless one gets the impression that the hand gun controls we have had have had some significant impact in reducing their availability and use in Canada in comparison with the situation in the United States, although I have to add that there are great difficulties in that sort of cross-cultural comparison.

Senator Flynn: I agree with that; it is very hard to draw a conclusion from that.

Senator Laird: The hand gun situation is well illustrated in Detroit. Believe me, I have read plenty about that on account of being a neighbour across the river. The murders committed with hand guns there generally occur when one relative murders another at a party, or when one friend murders another at a party.

Senator Flynn: At a party?

Senator Croll: They all get "stewed".

Mr. Froomkin: I think availability is the more relevant factor. If a gun is available it is going to be used.

Senator Laird: That is it.

Mr. Froomkin: The purpose of this legislation is to restrict the availability of all firearms, not only hand guns but long guns as well.

Senator Croll: How do you categorize the sawed-off shot gun?

Mr. Froomkin: I am not aware where the statistics placed that weapon.

Mr. Gualtieri: A sawed-off weapon is not a significant weapon in homicides.

Senator Flynn: It is restricted.

Mr. Froomkin: It is a restricted weapon at the moment.

Senator Croll: Yes.

Mr. Froomkin: It is under "hand guns," L-17.

Mr. Gualtieri: That is for robbery. We do have data on that, gentlemen, and perhaps on a subsequent occasion we could bring this forward.

Senator Smith (Colchester): May I ask who it is envisaged will be the registrars who will be doing the registering? Is this to be a police task or a new class of employees?

Mr. Froomkin: There will be two categories: the licensing officer, who will only be authorized to cause licences to be issued; and the local registrar, who will also have the same jurisdiction but will also issue permits.

The proposed legislation defines "licensing officer" as peace officers and police constables and such other classes of persons as are designated by the Order in Council.

Senator Smith (Colchester): I read that, and that is what makes me ask this question. It is the "such other classes of persons" that makes me ask the question.

Mr. Froomkin: That has not yet been determined; the other classes have not been prescribed by regulation. They could be, for example, retired policemen, retired military personnel, retired senators.

Senator Godfrey: We seem to get off the track all the time. You gave us a lot of statistics and information on the present situation and suddenly we got diverted off into the act. Are there any more statistics, or is there any other information you can give us about the present situation, that would be helpful to us? I think we should let you finish what you are going to tell us.

Mr. Froomkin: I was going to go along in what I hoped would be as orderly a way as possible.

Senator Godfrey: Is it possible to allow Mr. Froomkin to proceed in that fashion?

Mr. Froomkin: If questions arise, senators, I am more than happy to deal with them at that time.

Senator Smith (Colchester): Senator Godfrey and I both took an oath to refrain from interrupting if we can possibly help it.

Senator Godfrey: Perhaps we could decide to follow the ordinary rules of procedure, instead of just breaking in. I am going to quote from Senator Molson, when he presented the report of the Rules Committee several months ago in the Senate.

Senator Flynn: We want to help you.

Rules are an extension of the democratic process because they make conditions the same for all. They reduce the advantages of the selfish who disregard the interests of the whole.

I think we can get along a lot faster if we follow the rules. They are there for recognition.

Senator Robichaud: I am not sure that we would get along more effectively, if we do that. We should have an informal discussion all the time and not follow the strict parliamentary rules, if we want to be familiar with all the facts and figures. When a question pops up I am going to ask it, regardless of what my friend Senator Godfrey says.

Senator Godfrey: You should at least ask for recognition by the chair. We have been through all of this, Senator Robichaud, dealing with the marihuana bill. We will get along a lot quicker if we follow the rules.

The Chairman: Mr. Christie, did you have something to say?

Mr. Christie: I was going to suggest that it might be useful—to make it clear to Senator Godfrey and the other senators—to say that people who issue licences in relation to long guns are not necessarily going to be the same people who are going to be issuing licences in relation to hand guns.

The practical effect of the legislation will be, either through administrative or other means, to make it much more difficult to get a hand gun into your possession in the future, than it will be for what we call a long gun, even though you will have to have a licence to have a long gun. As Mr. Froomkin pointed out earlier, you license the weapon vis-à-vis hand guns and other restricted weapons; with relation to long guns, you license the person not the gun. That is an essential and fundamental aspect of the whole scheme of the proposed legislation.

Senator Robichaud: Just to make my point clear, I would use one specific example. Suppose that I have eight guns, all long guns, and my son belongs to a rifle club somewhere, but I am licensed to own those guns, can he use them legally?

Mr. Froomkin: Under the proposed legislation, not unless he has a licence as well.

Senator Robichaud: My son must have a licence?

Mr. Froomkin: Yes, sir.

Senator Robichaud: Suppose he does not belong to a rifle club and he goes target shooting on my farm with my hand gun and he is caught on the way back with the gun, which is under my licence, what happens to him?

Mr. Froomkin: What happens to the gun, you mean, sir?

Senator Robichaud: To the gun and my son.

Mr. Froomkin: He will be committing an offence if he does not have a licence. If he has a licence he can go target shooting on the farm with your gun. If, in fact, he does not

have a licence, he is committing an offence and the weapon will be seized. It will be turned over to a magistrate, who will give you notice, and if you can claim that you have lawful ownership of the gun, that you have a licence to possess it, you will get the gun back.

Senator Flynn: If he let his son have it without inquiring whether or not he had a licence . . .

Senator Robichaud: I am sure that this happens in thousands of cases.

Mr. Froomkin: —the father is also committing an offence.

Senator Flynn: He may not get his gun back then.

Mr. Froomkin: It is conceivable.

Senator Robichaud: If the guns are stored here in Ottawa—and if I were to live in Toronto, the same thing—and I own a farm and there is a target shooting club which my son belongs to, my son cannot use my gun to go target shooting on my farm?

Mr. Froomkin: Unless he has a licence, no. No one can have possession of any kind of firearm unless they are licensed or have a special permit or a special temporary permit. We do not want to get into that just yet.

Senator Croll: Who gets the gun?

Senator Flynn: That is not important. The point he is making is that the use of the gun has to be with a licence.

Mr. Froomkin: The possessor must have a licence.

Senator Flynn: Well, it is the same thing because possession may not always be easy to define. If you use a gun without a licence, then you commit an offence.

Mr. Christie: Senator Flynn, as an example, it may be a shotgun that has been in your family for generations. I happen to have a 16-gauge relic that has been handed down to my son. He will have to be licensed, even though that gun sits in a cupboard and has not been used in decades and may never be used, but if the boy is to continue to own the gun he will have to be licensed.

Senator Flynn: I was referring to the example given by Senator Robichaud, that anyone who takes a gun, owned by someone else, has to have a licence to use it or have it in his control.

Senator Croll: Can a father and son be licensed for the same gun?

Mr. Christie: You do not license the gun; you license the person.

Mr. Froomkin: The person must be licensed to possess any kind of firearm or ammunition. Therefore, if you have one gun and 20 people in the family who want to use it, all 20 must be licensed.

Mr. Gualtieri: I believe the automobile, Mr. Chairman, would be a perfect example here, a good analogy to bear in mind. There can be many drivers of a car, but there is one owner and one registration pertaining to that car. The same schema is proposed here.

Senator Robichaud: I am the licensed owner of a gun, I live in the city and I go to my farm with my son and I am

target shooting. I have a licence but my son takes target shooting. Am I splitting hairs here? Does he need a licence?

Mr. Froomkin: I do not believe you are splitting hairs; you are committing an offence and so is he. No one can possess or use a firearm unless he has a licence.

Senator Flynn: The example given by Mr. Gualtieri about cars is quite a good one.

Mr. Gualtieri: With perhaps the one qualification that, of course, one does not have to register rifles and shotguns under the proposed legislation.

Senator Godfrey: That is a hell of a difference; half of your illustration is wrong then.

Mr. Froomkin: Maybe the analogy can go this far: If you have a family vehicle, everyone who wants to drive it has to have a driver's licence.

Senator Flynn: I used the word "use". Ownership is something else. If you own it, you are presumed to use it. That is the point.

Senator Robichaud: No one in this country will be able to pull the trigger of a firearm without a licence.

Senator Flynn: Or have it in his hands.

Mr. Froomkin: We must not forget that there are some categories where a person does not have a licence; he has a permit or a special temporary permit. I will get to that later. He will have to have what we generally call a licence—that is, authorization by someone saying that he is not unfit, or he has demonstrated he is not unfit.

The Chairman: Will you now proceed, Mr. Froomkin, in the order you wish to proceed?

Senator Godfrey: Is there any further information that we should have in the present situation?

Mr. Froomkin: There is a fair amount. The purpose of the legislation, as I understand it, is as follows: to prevent the possession of firearms by the irresponsible, the mentally unstable, and the violent who are a danger to themselves and others; to discourage casual possession of firearms for the sake of possession without any legitimate purpose or use; to reduce the availability of firearms and thereby to abate both their impulsive use and the highly lethal method of resolving domestic situations, as well as their use in personal crimes; to prevent a spur-of-the-moment purchaser from firing a firearm—the time required to process a licence application, which we have discussed, will indirectly act as a cooling off period, with the potential for reducing impulsive use of firearms in suicides and domestic homicides; to foster social responsibility towards firearms, since the community itself will participate in the screening process by the use of guarantors; and to restrict the possession of firearms to those over 18, except under supervised conditions.

Senator Flynn: Over or under?

Mr. Froomkin: To restrict possession to those over 18, except in certain other restricted categories, which I will deal with now. The present provisions of the Code provide no legal impediment for a person over the age of 16 to possess a rifle or shotgun, or in relation to his right to make an application for a restricted weapon certificate or a permit to use or carry such a weapon. Those between 14

and 16 can at the present time obtain a special permit issued by the local registrar in relation to all firearms. A minor of any age can obtain a permit to hunt game for food in specifically designated areas.

The proposed legislation will allow those between the ages of 14 and 18 to obtain a permit for limited uses. Those are game hunting, sport shooting, target practice and instruction, all under strict conditions of supervision attached to and forming part of the permit. So the 14-to-18 group will be restricted to game hunting, sport shooting, target practice and instruction. The minor applicant will be required to establish fitness in the same manner as required of adults, with the exception that instead of two guarantors, the parent of the minor applicant will be required to signify his consent in lieu of one of the guarantors.

In cases where, because of circumstances, the parent is not alive or is not available, another person *in loco parentis* can do that. The existing right to hunt game for food and sustenance in specially designated areas will be carried forward and will be expanded to all those under the age of 18. That is with respect to the age restrictions we are talking about.

Senator Croll: What is a B-B gun?

Mr. Froomkin: A B-B gun will not come under the present legislation because of the qualification of a muzzle velocity in excess of 500 feet per second.

Senator Godfrey: It is an air gun.

Mr. Froomkin: With respect to licensing dealers, the present provisions of section 96 of the Code require all dealers in respect of restricted weapons to keep, and produce on request, a record of each transaction. Of those dealers, only retail vendors, repairers and pawnbrokers dealing in restricted weapons are prohibited from carrying on business without a permit issued for the purpose. The problem is that the control of dealers of firearms generally is considered to be insufficient. In light of the licensing scheme, it was deemed to be essential to place an onus on dealers not to sell firearms except to those who had qualified for a licence. So the proposals are as follows: All dealers, whether manufacturers or retailers, at the most local level, will be required to keep records of all transactions in relation to all firearms and ammunition, and to keep inventories and to produce those records and inventories for examination.

Senator Croll: But they always did.

Mr. Froomkin: No; only in respect of restricted weapons. This will be in respect of all firearms and all ammunition. All dealers, including importers and manufacturers, will now be required to obtain a permit to carry on business. Every outlet will be deemed to be a separate business for the purpose of issuance of a permit. For example, if Hudson's Bay has 50 stores around the country, from the administration standpoint it makes sense to say that each of those outlets is a separate business for the purpose of obtaining a permit and keeping records. Regulations will be made to strictly control display, storage and safe keeping of all firearms and ammunition in the hands of dealers. Finally, no transaction between a dealer and an individual purchaser can be completed unless the purchaser produces a licence under which he may lawfully possess a firearm, and, in the case of restricted weapons the additional necessary permit.

Senator Croll: No transaction?

Mr. Froomkin: No transaction.

Senator Croll: What do you have in mind?

Mr. Froomkin: You cannot buy, sell, give, barter, trade ammunition or firearms with anyone unless they produce a licence, and, where required, a permit. So that even those people who want to break the law by not getting a gun licence, before they get ammunition—unless they steal it—if they want to buy ammunition, they will have to demonstrate that they have a licence.

Mr. Christie: That is very significant, senator. It means that if you want to go out and buy a box of 12-gauge shotgun ammunition to see if you can find a partridge, you will have to satisfy the dealer that you have a licence and that you are a fit person.

Mr. Froomkin: The next category that will be of interest to honourable senators is that of restricted weapons, their registration and the need test. The present provisions require all restricted weapons to be registered. The right to refuse registration is in law exercised only by the commissioner, who may refuse to issue a registration certificate where he has notice of any matter that may render it desirable in the interests of the safety of other persons that the applicant should not possess a restricted weapons outside the home or place of business are more carefully regulated. The local registrar of firearms considers the character of the applicant, although the law is silent on the point, and he must be satisfied that the applicant requires the restricted weapon for one of four stated purposes—this is under present legislation (a) to protect life or property—and I emphasize "or property" because it is proposed that that be removed; (b) for use in connection with his lawful professional occupation; (c) for target practice in accordance with conditions on the permit.

The problem which has arisen in respect of restricted weapons is that registration certificates are granted to anyone who wishes to have a hand gun in his home or place of business, unless the commissioner knows that it is not desirable in the interests of safety that the applicant should possess a restricted weapon. Subject only to this condition, a person can keep a hand gun at home if he wants it for protection, because he is a collector or because the weapon is a souvenir; and although reasonably effective, the system still permitted too many hand guns to be registered. There were just too many people who had hand guns who really did not have a legitimate need or use for them. The proposed legislation requires that need be demonstrated not only for the purpose of obtaining a permit to carry, but also at the time of the initial application for registration of the restricted weapon.

Additionally, each applicant must have complied with the licensing requirements first. To provide for the bona fide collector, a separate category of use has been established, and the collection of antiques, curios or relics will be governed by regulation. The purpose of the proposed legislation is part of the overall aim to reduce firearms availability, and these provisions will enable us to remove from circulation some of the handguns that are presently owned for which there is no demonstrable need. Hopefully, this will sharply reduce the number of acquisitions of restricted weapons.

Senator Croll: What about the Indians?

Mr. Froomkin: The Indian population will be treated the same as every other Canadian; they will be required to be licensed.

Senator Robichaud: On the reserves as well?

Mr. Froomkin: Everywhere.

Senator Croll: And the age limit will apply to an Indian's children, too?

Mr. Froomkin: Yes, senator, except that those who are under 18 years of age who have to hunt for food will be able to obtain a permit.

Senator Smith (Colchester): With reference to the grounds on which handguns may be owned and kept, did I understand you to say that the ground of it being a souvenir will disappear?

Mr. Froomkin: No, senator. There will be special provisions for collectors, antiques, curios or relics. Those categories will be dealt with in the regulations.

Senator Smith (Colchester): That did not seem to me to cover the individual weapon that may have been handed down from father to son for several generations and was simply kept as a family heirloom.

Mr. Froomkin: In fact, that is a category where we hope the individuals will turn in handguns on the basis that there is really no need for such weapons. However, if the individual can demonstrate that he is a bona fide gun collector, notwithstanding that he has only one gun, or that it is an antique, curio or relic, then the regulations, presumably, will be broad enough to allow him to keep that family heirloom.

We have to bear in mind that there are literally hundreds of Lugers from the Second World War that are really of no interest to anyone. They are not antiques; they are not curios; they are not relics—unless it happens to be the Luger that Adolph Hitler carried, which is obviously the exception. There are all kinds of these guns around for which there is no legitimate purpose, and where someone gains possession of such a gun as a result of a break-in, there is a dangerous weapon around that otherwise would not be available.

Senator Smith (Colchester): I suppose this is not the time to debate it, but when it comes to the proper time I have some views on that which might differ from yours.

Mr. Froomkin: I would be happy to hear them, senator, now or at any other time.

Senator Smith (Colchester): We will wait until the appropriate time. I just throw that caveat in.

Mr. Froomkin: The next category is prohibited weapons. Under the existing legislation, prohibited weapons fall into three categories, as set out under section 82(1) of the Criminal Code—silencers, spring knives, and a weapon of any kind not being a restricted weapon, or shotgun or rifle of a kind commonly used in Canada for hunting or sporting purposes that is declared by order of the Governor in Council to be a prohibited weapon. By the authority granted in that latter category, there are a number of weapons that have been declared by the Governor in Council to be prohibited, and they are the Kung-Fu weapons. In addition to those, there are also tear gas, mace, and, recently added, the Taser Public Defender which was a very dangerous weapon.

In order to decrease the availability of lethal weapons which have no legitimate use, the proposed legislation expands the existing definition of "prohibited weapon" to include all fully automatic weapons and, more importantly, to provide for the prohibition by Order in Council of certain types of restricted weapons which also have no legitimate use. This will enable the Governor in Council to immediately prohibit the hand guns commonly known as "Saturday night specials" and the sawed-off shotgun.

Senator Croll: I forgot to ask you about the Tommygun.

Mr. Froomkin: The Tommygun, being a fully automatic weapon, will, under the proposed legislation, be prohibited. Under the existing legislation, it is restricted.

Senator Smith (Colchester): Is there a detailed definition of what constitutes an automatic weapon?

Mr. Froomkin: There is in the bill, yes.

Mr. Christie: In essence, senator, it is a weapon that, by one squeeze of the trigger, keeps repeating its firing capability.

Senator Smith (Colchester): I cannot think of a handgun at the moment that would not come under that definition.

Mr. Christie: On a semi-automatic weapon, senator, you would have to squeeze the trigger every time you wanted to discharge the ammunition.

Senator Smith (Colchester): I am not unfamiliar with weapons and I do not need an elementary lesson—and I do not mean by that that you were trying to give me one. I simply mean I understand something about weapons and I meant what I said. Unless I misunderstood the definition, it covers almost every kind of hand gun.

Mr. Froomkin: I may be wrong, senator, but my understanding of the definition was that it dealt with a firearm and I am reading, of course, "that is designed, altered or intended to fire bullets in rapid succession during one pressure of the trigger,"—and that would only take into account, according to my information, fully automatic weapons. That is, when you pull the trigger and hold it, a series of shots is released, as opposed to having to pull the trigger successively for each shot.

My understanding from the Royal Canadian Mounted Police firearms people is that the definition is intended to cover only the fully automatic weapon, such as the Tommygun.

Senator Laird: The Bren gun.

Mr. Froomkin: Yes.

Senator Smith (Colchester): Taking some kinds of revolvers, for instance—and I am not now using "revolver" in its technical sense—all you have to do is keep pulling the trigger and away she goes.

Senator Laird: But you do have to pull the trigger each time.

Senator Smith (Cochester): Only once.

Mr. Christie: Senator Laird mentioned the Bren gun. The Bren gun can be adjusted so that it is fully automatic. However, if you simply flick a little lever on the side, it is then a semi-automatic and you have to squeeze the trigger.

Senator Smith (Colchester): I am well aware of that, having instructed several hundreds of thousands of people to operate it.

Mr. Christie: I have used one myself.

Senator Godfrey: There seems to be some misunderstanding. Dealing with the revolver that we had during the war, the trigger had to be pulled for each, individual shot.

Senator Croll: Senator Smith is speaking of another kind of revolver. He knows what he is talking about.

Senator Godfrey: He said the definition covered all hand guns, and I do not follow that.

Senator Smith (Colchester): I may have taken in too much territory, but that is what I thought the definition meant when I read it.

Mr. Froomkin: It is certainly not intended to convey that meaning, senator. Perhaps we will have a very close look at it and speak to the firearms experts to ensure that it does only cover automatic weapons. I was satisfied that it did.

Senator Smith (Colchester): You may well be right.

Mr. Froomkin: I will certainly take your experience under advisement.

Senator Smith (Colchester): I am occasionally wrong.

Mr. Froomkin: The legislation also proposes increased criminal liability, and the proposals are as follows: Firstly, to increase the maximum penalty for unlawful possession and use of firearms, restricted weapons and prohibited weapons; secondly, to provide...

Senator Croll: Dealing with the first one, increasing penalties from what to what?

Mr. Froomkin: Perhaps I should have said, substantial increases in maximum penalties. In many cases, two years to five years and five years to ten they are doubled in most cases.

Secondly, to provide for penalties for violation of the licensing system, both in relation to possession and sale; thirdly, the creation of two new offences, each designed specifically to more adequately protect society from criminal and irresponsible firearm use, the first one being that any person convicted of using an offensive weapon while committing an indictable offence will be subject to imprisonment for at least one year and up to 14 years, which sentence will run consecutively to any other sentence imposed or which the person is serving.

Senator Neiman: What is meant by "using" in that sense? Does it mean pulling the trigger or just holding it in one's hand, having it in one's possession?

Mr. Froomkin: "Possession" is a word that has not been used because of the fact that if an individual is out hunting, following which he unloads his firearm and puts it safely in the trunk of his car and locks the trunk, then celebrates his kill by getting drunk and drives, which would constitute committing an indictable offence while in the possession of a firearm, he would be subject under this legislation to a minimum penalty of one year's imprisonment, and that is obviously not intended. The legislation is aimed at the person who is actually using a firearm during the commission of an indictable offence. I would say the

normal definition of "use" would apply; that is, pointing at, firing at, threatening, where the firearm is actually employed during the commission of an offence. It is under those circumstances that, in addition to any other penalty for the offence committed—if it is armed robbery, for example—the individual will be subject to a minimum consecutive term of one year and up to 14 years.

Senator Flynn: If you commit a theft and there is nobody around, you have a firearm but you do not use it, you just have it in case, would it come under that provision?

Mr. Froomkin: I would think not. A number of people who have discussed this have raised this very problem. You get very strange results. For example, there is the security guard who on the way home from work stops at a bar, has a few drinks and decides to slap the waitress on that portion of her anatomy; he is committing an indecent assault while he is armed.

Senator Flynn: Why don't you say it frankly?

Senator Langlois: He does not need a gun to do that.

Senator Flynn: If the gun is in the trunk of the car, do you think that would be covered?

Mr. Froomkin: Yes, because he is in possession of it, because it is in his custody or control.

Senator Flynn: I think it could be defined, anyway. I am not speaking of the anatomy there!

Mr. Froomkin: If you attempt to define "possession" to deal with the problem we are concerned with, you end up with "use," because that is where I in fact ended up when I was trying to find a word other than "use". I know that some of my colleagues who worked on it earlier came to the same conclusion.

Mr. Christie: Mr. Froomkin mentioned that we had discussed this, and we did in some detail. Assume you have gone on a hunting trip and before you leave the hunting trip and before you leave the hunting lodge you and your friends polish off what Scotch is left. You are driving home and you may have two or three shotguns in the car. You have got possession of the guns, but they are unrelated to the fact that you are driving while impaired.

Senator Flynn: I can make that distinction, and I think it could be made in law. It has to be related to the offence.

Mr. Froomkin: That is why we have "use." "Use," employing the ordinary dictionary definition, which is what the court will have to do, is, I think, broad enough to contemplate all the problems with which we are concerned.

Senator Flynn: Consider the example I gave. If I commit a theft and I have a revolver on me, I think I would come under the definition of the new offence.

Mr. Froomkin: Except that you will be guilty of theft. If you do not have a licence you will be guilty...

Senator Flynn: Whether or not I have a licence is not, I think, relevant.

Mr. Froomkin: It is relevant in that you were committing a number of offences for which you got convicted. They are still related to your actions. The legislation is aimed at those persons who are actually employing the firearms in the commission of indictable offences.

Senator Flynn: Certainly, if the firearm is connected with the offence—whether or not it is used, whether or not it is there just in case it is needed, it is on the man—I think it should come under the definition of the new offence.

Senator Laird: Doesn't "use" cover that very nicely?

Senator Flynn: That is what I think, but that is not what the witness is suggesting.

Senator Laird: In the example given, of getting drunk and driving...

Senator Flynn: That is something else; there is no relationship between the two.

Senator Laird: Because you did not use the weapon to get drunk.

Senator Flynn: If I commit a theft, I need no gun, but I have a firearm or a revolver on me; I think it is related to the offence.

Senator Neiman: Would that not be a matter of judicial interpretation? It is in your pocket and people do not even know you are carrying it.

Senator Flynn: That is what I am suggesting. The witness seemed to suggest that if I do not use it, if I only have it on me, this would not be a separate offence from the theft.

Senator Neiman: Necessarily.

Mr. Froomkin: What I am suggesting is that if you are in possession of the firearm but you do not use it, in the broadest and general sense you would be committing an offence under that section.

Senator Flynn: I agree with you, but I suggest that I am using it if I have it on me when I commit a theft.

Senator Laird: As a threat?

Senator Flynn: Sure. It is obvious.

Mr. Froomkin: A court may very well accept that argument.

Senator Smith (Colchester): The courts have interpreted the word "use" as a verb, have they not?

Mr. Froomkin: Yes, sir, and in the dictionary definition as well. Obviously, the very question raised here was raised by the various people who were drafting it. "Possess" is the easiest word to use; it takes in everything. However, you end up with so many ridiculous situations you are not contemplating that you have to restrict the category to the actual use. If the weapon is employed during the commission of the offence, that is using it; but if it is merely in the pocket, nobody knows it is there except the person carrying it, and he steals something, I would not have thought that was using the weapon during the commission of an offence.

Senator Flynn: I disagree with you.

Senator Smith (Colchester): You could be using it to bolster up your courage to enable you to commit the crime.

Mr. Froomkin: Yes.

Senator Flynn: In any event, it is a question of interpretation, I guess.

Senator Laird: That will leave some work for us lawyers.

Senator Smith (Colchester): I think we are creating more and more all the time.

Senator Flynn: You don't need that on top of the rest.

Mr. Froomkin: The next category is that of seizure. The present Code, section 103 in particular, provides special powers of seizure to enforcement officers without warrant in relation to anything by means of which an offence was being committed or had been committed against any provisions of the Code relating to prohibited and restricted weapons. Section 105 of the Code only permits an application to the court for a warrant to seize firearms and other offensive weapons in circumstances where it is found to be undesirable in the interests of safety for that person to have possession of the weapon. The problem was that all firearms are now being brought into a controlled system, and therefore a consequential amendment to section 103 became necessary.

The other difficulty arose in relation to the familial dispute situation, where police effectiveness was curtailed by the limiting effect of the present sections 103 and 105—that is, where a policeman walks in and sees the problem right there in front of him but can, in law, do nothing.

The proposals are to amend section 103 to provide the authority to seize all firearms on reasonable grounds that an offence has been or is being committed, and to limit the restrictive definition of "dwellinghouse" presently contained in section 2 of the Code as it applies to section 103, and to allow police officers to seize firearms, offensive weapons and explosive substances in those cases where time does not permit the Crown to make an application to the court for a warrant under section 105.

Senator Laird: It makes sense.

Mr. Froomkin: I think that is probably one of the strongest and most relevant provisions in the legislation.

Mr. Gualtieri: Perhaps I might just interrupt for a moment to pick up the point that Senator Croll raised earlier, on implementation. I would suggest that this section, for example, might be implemented much sooner than the licensing scheme, which will have to take some time to develop. There are a number of other provisions which I think will probably be implemented as soon as the legislation has passed Parliament.

Senator Neiman: Mr. Chairman, I am wondering if I missed one part of Mr. Froomkin's earlier comment. Did you tell us what the second new category of offence was?

Mr. Froomkin: I may have missed that.

Senator Neiman: I interrupted you with a question, actually.

Mr. Froomkin: I mentioned that earlier this afternoon. However, I think at that point I omitted it.

The second category was the careless use, handling, storage and carrying of a firearm will now be subject to criminal sanctions.

Senator Neiman: Thank you.

Mr. Froomkin: Prohibition orders is the next category. Under the present Code there is provided a mechanism

whereby a person convicted of an offence involving the use, carriage or possession of any firearms, is subject to an order prohibiting him from possession of a firearm for a period of time not exceeding five years, at the discretion of the convicting court.

With the introduction of a careless use, carriage, et cetera, section, it was necessary to incorporate this new concept into the prohibition section. The practical application of the present law was limited to very few offences.

The provisions that are proposed have been expanded to include: firstly, an offence involving the use, carriage, possession, handling or storage of any firearm; and, secondly, an offence in the commission of which a firearm was used or use of a firearm was threatened.

The provisions of section 105 have also been expanded to allow the court to make a prohibition order where, in the interest of public safety, it is undesirable for a person to have possession of firearms or offensive weapons. That authority is not part of the existing statute.

So, prohibition sections have been expanded as well to take into account some of the more significant problems that we have faced and probably will face.

Senator Neiman: Will those prohibition orders be recorded on the computer system?

Mr. Froomkin: Yes, they will be. The proposed legislation requires that all licences, permits, refusals to issue same, prohibitions and revocations be entered on a register and that register will be kept by the commissioner.

It is also proposed that there be a recall and amnesty program, since there are presently approximately 10 million or 11 million firearms in Canada and roughly 1½ million hunting licences are issued each year. We know that this figure contains considerable duplication, with a single person having as many as four or five licences. In addition, a small proportion of those 10 million or 11 million guns are owned by target shooters or collectors. It is also estimated that there are at least 50,000 restricted weapons in Canada that are not registered. These figures suggest that there are many guns lying around unused and, in line with the general policy of reducing availability of firearms, the recall amnesty program is designed to get some of these unused guns out of circulation, where they might be used to settle a domestic dispute, stolen by a robber, used to commit suicide or lead to a tragic accident. In a nationwide campaign, Canadians are going to be urged to turn in these unwanted firearms to the police. The amnesty portion of the recall program is designed to assure owners of prohibited or unregistered restricted weapons that they will not be prosecuted.

There has been some considerable success with recall programs recently in Brampton and Ottawa. The local recall program took place following the two unfortunate shootings in those cities. In Ottawa, 236 weapons were turned in, while the figure in Brampton was 120.

There is another area which does not come directly under the act but which is very much directly related to the program, and that is education. Mr. Gualtieri can probably assist you on the program of education, generally.

Mr. Gualtieri: Education in the safe use of firearms is going to be a very important element in the package of proposals that the government will be putting forward. At the moment, the education program is still being developed. Therefore, I am not in a position to give you details.

It is clear that with as many gun owners as we have in Canada we must make sure everyone understands that the safe handling and storing of firearms is an indispensable prerequisite, if we are going to get the number of firearms incidents down.

Again, I would come back to some of the earlier statistics we put on the table, where it was pointed out that out of roughly 1,500 firearms deaths, about 1,000 are suicides, about 125 are accidents and of the 270 odd murders, roughly 250 are what might be called of a domestic type or amongst friends or acquaintances. In these areas, understanding the safe use of firearms might have some considerable impact.

Senator Smith (Colchester): I wonder if I might ask another question with reference to those statistics? Have they been compared on a per capita basis with other Western countries?

Mr. Gualtieri: We, ourselves, have not been able to do original research in that area, but there has been some work by Interpol, comparing murder rates in various countries. The only thing I can tell you from memory is that amongst industrial countries, Canada has the second highest murder rate next to the United States.

Senator Neiman: From all types of homicides?

Mr. Gualtieri: Yes, that is a murder rate and not a firearms murder rate.

Senator McGrand: In the education aspect, I understand you are just developing that proposal now.

Mr. Gualtieri: Yes.

Senator McGrand: There is some very good work being done by some gun clubs in some parts of the country, and curiously enough by some research army units. It is a variable factor, but there is some work being done with reference to gun safety, with reference to young recruits, which I think is rather significant.

Mr. Froomkin: I should perhaps add that it is intended that the Attorney General of Canada will meet with his counterparts in the provinces to ascertain whether civil liability might be legislated as well in the provinces, on a relatively uniform basis, with respect to the use of firearms. That is another area which is strictly provincial, of course, but the federal government is going to be moving ahead with that and meeting with the attorneys general of the various provinces.

Senator Smith (Colchester): You mean civil liability relating to negligence?

Mr. Froomkin: Yes, sir. It depends on how far the provinces want to go, whether they want to legislate for vicarious liability—where there is going to be an ownership section, as there is with a motor vehicle, whereby if your gun is used during the commission of an accident, whether you will be civilly liable unless you can show the gun was taken without your permission. There are a number of areas of civil liability which should be gone into to ascertain on a uniform basis what, if anything, might be done.

The Chairman: Does this conclude what you have to say?

Mr. Froomkin: In general terms, that was the presentation. I thought this might assist you, as a starting point.

Senator Neiman: I would just like to ask one further question. I was wondering about the section relating to the importing, or, more particularly to, say, American hunters who bring their weapons into Canada. What provision are you making—or are you—for registering them as they bring their weapons in, and then ensuring that they take them back out and that they do not dispose of them here in Canada?

Mr. Froomkin: With respect to the weapons themselves, the legislation does not take that problem into account. What the legislation does take into account is that the American hunter, when he comes into Canada with his weapon to hunt, will have to obtain a special temporary permit, and that will be restricted to the area in which he is hunting, and for the time during which he will be in the area hunting.

Senator Neiman: But you will not have any check on whether he, in fact, takes his gun back out with him.

Mr. Froomkin: No.

Senator Neiman: That could lead to an hiatus. People might come in under the guise of being a hunter, bring in weapons and leave them here.

Mr. Froomkin: I do not think that has been found to be a problem. You do not get Americans bringing in shotguns and selling them, generally. I do not think that is a problem. The legislation does, of course, contemplate the sale of a weapon to someone who does not have a licence. That is an offence committed by both the person who obtains the weapon and the one who sells it. Even if an American commits the offence in Canada, he is liable to be prosecuted.

Mr. Christie: As we pointed out earlier, we are not registering guns; we are registering people.

Mr. Froomkin: Hand guns are in a different category. Think of it as a driver's licence as opposed to registering your automobile.

The Chairman: Mr. Froomkin tells us that this concludes the general summary of the legislation. What does the committee wish to deal with at the next sitting? Does it wish to continue by way of questions on what he has said, or shall we go on to the next subject matter, which is "Invasion of Privacy"?

Senator Neiman: I think we should go on to the next section and cover each one generally, if we can, to find out where we will have the greatest problems and where we will be concerned with possible changes.

The Chairman: If that is the wish of the committee we will go on to deal with "Invasion of Privacy" at the next meeting.

Senator Smith (Colchester): That would give us an overall view, which I find differs from the one I had

acquired from my own reading. Probably it gives us a more accurate view.

Mr. Christie: May I ask, Mr. Chairman, if it is the intention of this committee to call witnesses, or are you simply going to go through the bill with officials from the departments concerned? I am not suggesting any course of action.

The Chairman: It was my feeling that if we went through each of the subject matters in the way that we have gone through the control of firearms, we would be in a better position to understand what the witnesses are saying and to question them. I feel that we shall have to hear witnesses. I already have a note here that Mr. Nicholson of the Canadian Wildlife Federation is writing me asking to appear. He is a former commissioner of the RCMP. I think we shall have to hear witnesses.

Senator Godfrey: I was going to suggest, Mr. Chairman, that we should proceed to hear witnesses on this particular section as soon as today's proceedings are published, so that other witnesses could be helpful. We have had considerable mail over this, a concerted lobby, and we shall have to hear from those people. If we are going to give preference to certain sections, as soon as we are ready, we should go back, even though we have not finished everything else, and give the witnesses a chance to be heard. I would suggest some time after the publication of today's proceedings.

Senator Laird: That usually takes about two weeks.

The Chairman: It should perhaps be rushed in this case. We will go on to "Invasion of Privacy" at the next meeting. When shall that meeting be held? I think we should meet twice a week.

Senator Laird: Mr. Chairman, I am bound to raise this question. Having spent some time with Senator Bourget, who is chairman of a three-man committee, consisting of himself, Senator Cook and Senator John Macdonald...

The Chairman: Senator Bourget will be meeting with me immediately after this meeting.

Senator Laird:—There is no doubt that we shall have a problem in meeting twice a week.

The Chairman: As I see it, there are eight subject matters. If we meet only once a week, it will take two months before we have heard the general outline by the officials.

Senator McIlraith: Mr. Chairman, I would be content to leave this matter with you, in the light of what you will be discussing with Senator Bourget.

The Chairman: Perhaps the committee would leave the matter with me. I will meet with Senator Bourget and will advise the committee on an appropriate time for the next meeting. The committee is adjourned.

The committee adjourned.



Government
Publication

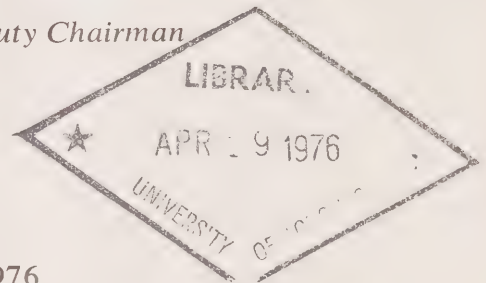
FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable KEITH LAIRD, *Deputy Chairman*

Issue No. 37

TUESDAY, MARCH 23, 1976



Second Proceedings on:

«The Subject matter of Bill C-83 intituled: 'An Act for better protection of Canadian society against perpetrators of violent and other crime'.»

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(19)

**Ex officio* Member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, 4th March, 1976:

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Langlois:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the subject-matter of the Bill C-83, intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime", in advance of the said Bill coming before the Senate, or any matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, March 23, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m., the Honourable Senator Laird presiding.

Present: The Honourable Senators Laird (*Deputy Chairman*), Asselin, Croll, Flynn, Godfrey, Hastings, Langlois, McIlraith, Neiman and Smith (*Colchester*). (10)

Present but not of the Committee: The Honourable Senator Bell.

In attendance: Mr. R. L. du Plessis, Acting Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its examination of the *subject matter* of Bill C-83 intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime".

The following witnesses, from the *Department of Justice*, were heard in explanation of the subject matter under review:

Mr. L. P. Landry, Q.C.,
Assistant Deputy Attorney General (Criminal Law);

Mr. Saul Froomkin, Q.C.,
Director, Criminal Law Section.

At 11:40 a.m. the Committee adjourned until 2:30 p.m.

At 2:30 p.m. the Committee resumed.

Present: The Honourable Senators Laird (*Deputy Chairman*), Buckwold, Croll, Flynn, Godfrey, Hastings, Langlois, McIlraith, Neiman and Smith (*Colchester*). (10)

Present but not of the Committee: The Honourable Senators Bell, Bourget and Lucier. (3)

In attendance: Mr. R. L. du Plessis, Acting Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its examination of the *subject matter* of Bill C-83 intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime".

The following witnesses, from the *Department of Justice*, were heard in explanation of the subject matter under review:

Mr. L. P. Landry, Q.C.,
Assistant Deputy Attorney General (Criminal Law);

Mr. Saul Froomkin, Q.C.,
Director, Criminal Law Section.

At 4:20 p.m. the Committee adjourned until Tuesday, March 30, 1976 at 10:30 a.m.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 23, 1976

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to consider the subject matter of Bill C-83, for the better protection of Canadian society against perpetrators of violent and other crime.

Senator Keith Laird (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, I should first inform you that, unfortunately, our chairman cannot be here today since he is at the funeral of the late Dr. John Deutsch in Kingston.

We have with us today Mr. L. P. Landry, Assistant Deputy Attorney General (Criminal Law), and Mr. Saul Froomkin, Director of the Criminal Law Section, Department of Justice.

Before we get to the meat of this meeting, may I say that the chairman has asked me to be careful to draw to your attention that at the end of this afternoon's meeting the committee will adjourn until 10.30 a.m. next Tuesday. We will be meeting at 10.30 instead of 10 o'clock as a result of consultation between the chairman and Senator Bourget, who is trying to co-ordinate committee activities. The committee will also sit at 2.30 p.m. next Tuesday.

This morning we will deal first, as I think was announced, with the question of invasion of privacy. For ready reference, honourable senators should turn to page 38 of Bill C-83, where you will find the clauses referred to in the table of contents.

I understand that you will deal with this matter, Mr. Landry. If it is satisfactory to you, perhaps you would first give any sort of summary you would like to put before the committee. The main thing we would like to know is what changes are proposed to the existing legislation by this bill.

Mr. L. P. Landry, Q.C., Assistant Deputy Attorney General (Criminal Law), Department of Justice: Honourable senators, there are probably three basic items this bill is changing in the existing law: The first is the definition of "offence" as it appears in section 178.1. I shall come back to that. Second, there is a proposed amendment to the period for which an authorization may be granted. That is section 178.13. Third, we have the question of admissibility of derivative evidence which may be obtained through an interception which may be found to be unlawful, or through an unauthorized interception. So, there are these three basic issues which are raised in the bill.

I would deal first with the definition of "offence". At the moment the word "offence" in section 178.1 relates to specific indictable offences mentioned in the section. It covers the Criminal Code, the Narcotic Control Act, the Food and Drugs Act, the Customs Act and the Excise Act. You have them listed in section 178.1.

Therefore, at the moment there is a selected number of indictable offences which are listed in section 178.1. In the proposed definition, the bill wants to do away with the selective basis of indictable offences, to cover and include all indictable offences. If the bill is adopted, any offence which is indictable may be the subject of interception.

What does "indictable" mean? It covers all offences said to be indictable in the Code or in a statute other than the Criminal Code, such as the Narcotic Control Act. That also works, for instance, through the definition of the Interpretation Act which includes any offence which may be prosecuted either summarily or by way of indictment.

For instance, you are quite familiar with the Narcotic Control Act on possession, which says that one may be prosecuted at the option of the Crown either by way of indictment or summarily for possession. That offence in law is deemed to be an indictable offence, until such time as you are before the court and the option is made by the prosecutor. Therefore, those offences which may be prosecuted summarily or by indictment are included within the meaning of the word "indictable" as proposed under the definition of "offence". That is the first change.

Senator Croll: When you talk about indictable offences or the alternatives, what is left out except the police action?

Mr. Landry: At the moment the police will not be able, under the proposed bill, subject to what we will see in a few moments, to obtain an authorization for a summary conviction offence. They will not be able to get an authorization for an offence which is to be punished summarily.

An example of this may be an act which is becoming more and more important in the fight against organized crime, the Small Loans Act. This deals with what we call "loan sharking." Those offences at the moment may be prosecuted only summarily. The police may not obtain an authorization for a Small Loans Act violation. That is the limit in the first part of the definition.

Senator Godfrey: I am sorry to interrupt but I do not understand. They cannot, at present, or under the new amendment?

Mr. Landry: Also under the new amendment they cannot, because under the next part of the section I am going to comment upon, we are going into that. Let's say it is for activities of organized crime only. If the police are looking at only an individual violation, it cannot, under the proposed legislation, obtain an authorization for wire-tap for an alleged offence which is punishable by summary conviction only.

Senator Neiman: That is a very small percentage of the offences listed under the Criminal Code. In fact, most of them are punishable by indictment.

Mr. Landry: That is correct.

Senator Neiman: So, you are making it wide open. This is essentially the same provision that was in Bill C-176 which was amended during the course of the hearings.

Mr. Landry: I am not familiar with what was proposed in Bill C-176, but you may be quite right on that.

Senator Neiman: I believe that was the case that they started with.

Mr. Landry: While we are on this subject, I would say that some of the selected nomenclature of indictable offences, in practice, have imposed serious limitations in certain circumstances. An example which has been put forward is that of escape. When a prisoner escapes from a penitentiary, he is out in the cold. He needs to communicate with persons; evidently he is going to communicate with persons he knows well. A good way for the police to try to locate him would be to intercept communications at places where he is expected to make phone calls. At the moment the law does not allow for wiretap as a result of an escape from jail. Therefore, the police can resort only to the normal means of investigation. Escapees are sometimes alleged to be extremely dangerous, and the police are rather anxious to locate them, for the protection of citizens. This is one area where problems have been encountered, and where a wiretap could not be obtained.

I have an example of such a limitation. I believe this was in an alleged kidnapping situation where the police were prevented from obtaining an authorization. I am sorry, I believe this was at the time of a request for an emergency authorization. I am confusing the situation here. I wanted to say that there was another problem with respect to an emergency authorization and, because a judge refused such authorization, the police were unable to prevent the murder of a child. I am sorry, this last example does not relate to the question being discussed.

Senator Godfrey: Is there any offence covered under the present act, which would not be covered under the new section?

Mr. Landry: No.

The second part of this definition relates to organized crime. At present it must be shown that the offences are part of the activities of organized crime. However, even for an experienced prosecutor to go before a judge and clearly demonstrate that a person is involved in so-called organized crime may be somewhat difficult. The words "organized crime" are not defined. They may be left to one's own interpretation. The proposed bill does away with the words "organized crime". The words used are words which are more understandable to judges in that they relate to offences and not to the concept of organized time. First of all, the offences which may be the basis of such an application could be any type of offence, including a summary conviction offence. That is strictly in relation to what I may call here "organized crime", although the bill does not use those words any more.

The police officer may have reason to believe that a summary conviction offence, let us say, for example, loan sharking, is being committed by certain individuals in concert and that these loan sharking activities form part of an overall scheme of organized crime which is related generally to the commission of more than just loan shark-

ing but rather to various crimes. For instance, to illustrate the situation, you might suspect that certain individuals are loan sharking and, as has been shown in some cases, particularly in Montreal, are deriving huge profits from it and using those profits to finance a heroin transaction. One perhaps needs the money to buy the heroin in Marseilles or Bangkok, and one needs cash, as credit cards are not normally accepted for such transactions. The cash may be derived from a loan sharking operation. If individuals are involved in such an operation to derive profits in order to further other criminal activities, then an authorization could be obtained if you can show to a court that, basically, you have reason to believe the loan sharking activities are being carried on in violation of the Small Loans Act, and show to the court that you have reason to believe that it is part of a pattern of criminal activity by those persons who planned and organized with a view to furthering the commission of other crimes which may be prosecuted by indictment. The proposed law says:

... in furtherance of the commission of crime involving one or more offences created by an Act of Parliament for which an offender may be prosecuted by indictment;

So that is the limitation. Therefore, you would have to show that it was a small loans offence and you would have to show to the court that this was part of an overall scheme and that these people were not just small operators, as was the case in the railway yards of the CPR and CNR at one stage, where there were loan shark operators, and where in the taxi business at one time there was such a business. They would need to be persons who are, as they say in the trade, connected. You would have to make some kind of demonstration to a court to obtain your warrant authorization to fall within the terms of reference of the section.

We do away with the words "organized crime" and we use language which is more easily understandable by a court. When we say, "in furtherance of the commission of crime, "crime" is understandable. "Involving one or more offences" is understandable. "Created by an Act of Parliament for which an offender may be prosecuted by indictment" is understandable to the court. The words "part of a pattern of criminal activity" will necessitate a demonstration in the affidavit of what those criminal activities may be and of what pattern they form part.

In summary, this replaces the words "organized crime," and when one is asked by a court to define what organized crime is, well, it is rather difficult to say what organized crime is or who is a member of organized crime. You have heard various comments in the press about that.

Senator Croll: Aven't you asking for a "fishing" licence?

Mr. Landry: If you look at the wording of the act, senator, you will see that it is necessary to indicate specific violations. The basis of the request will have to cover "any act or omission constituting an offence created by an Act of Parliament, whether or not the offence is one for which an offender may be prosecuted by indictment," and those acts will have to be specified.

Senator Croll: Well, let us take loan sharking as an example. Maybe it is a bad example, because we do not seem to have done anything about loan sharking.

Mr. Landry: May I say, Senator Croll, that since 1972 there have been 60 prosecutions in Montreal, the last one involving a \$25,000 fine, and one 48 months' imprisonment?

Senator Croll: And how many prosecutions were there in Toronto?

Mr. Landry: None in Toronto.

Senator Croll: That is the point I am making.

The Deputy Chairman: Toronto is a nice, clean city.

Senator Langlois: Toronto the good!

Mr. Landry: There could be many reasons for that, senator.

Senator Croll: Not all of the offences are taking place in Montreal, you know. There are plenty of them in Toronto and in the rest of the country, but you are not reaching them. However, that is another matter. The point I was going to make is that assuming you had permission to wiretap because of a loan sharking operation but you wound up with nothing with respect to the loan sharking operation, you might hear many things about matters entirely different from loan sharking which might become evidence which you could use for other purposes under the amendment.

Mr. Landry: First of all, senator, in order to obtain your warrant application you must have alleged some kind of offence which you have reasonable grounds to believe was committed. Secondly, you must demonstrate to the court that that offence is part of an overall situation which encompasses more than simply that offence. You may not specifically know at the particular time what those other offences may be. The money may be used to buy or to print counterfeit money; it may be used to bring in heroin from foreign countries. Those things you will find out by listening on the lines. But you cannot simply start out with a fishing expedition, because you must convince the court of the elements which are specified in the definition. The court must be satisfied that there are sufficient grounds to believe the allegations, as shown by the affidavit of the police officer who may be cross-examined by the judge. The judge must be satisfied that these basic elements are demonstrated.

You must bear in mind that in these applications there are three levels of screening. There is the police level, where I would trust that not just any constable would be capable of going to a representative of the attorney general to ask for wiretapping. You must understand that a constable in a police force who wishes to have wiretapping must go to a superior officer, if only to find out if equipment is available to carry out the task. Nor is it that particular constable who will tap the lines. It is another branch of his police organization which will have to do that. So superior officers are necessarily involved, and there must be some screening process because the facilities are limited.

Secondly, there is the screening process by the representatives of the attorney general or the solicitor general, depending on the type of offence involved. In the third place there is screening done by a court. The two last levels are provided by the law. The first one is a factual situation. I would submit that when we have gone through that process the chances are remote that authorization would be granted lightly or for no serious reason.

Senator Croll: Well, can you tell me wherein you differ from the reasoning of the Supreme Court of the United States, which holds that illegal tapping is not to be admitted under any circumstances?

The Deputy Chairman: Excuse me, Senator Croll. I think the witness intends to come to that later.

Senator Croll: I know; but this enters into the whole concept of it because, as I understand it, the court will accept illegal wiretapping.

Mr. Landry: No, not even under the proposed legislation. Illegal wiretapping will not be admissible.

The Deputy Chairman: Senator Neiman?

Senator Neiman: Mr. Chairman, instead of broadening the powers of the police to this extent—and you are, it seems to me, opening the door as wide as you can to the allowing of wiretapping under these proposed amendments—why do you not change the definition of “loan sharking”? Why, if loan sharking is such a serious offence, is it not punishable by indictment? It seems to me that you are going at it the wrong way.

Mr. Landry: Not knowing what may or may not have been announced, I will have to be careful about what I say in reply to this question; but I believe there has been some kind of announcement that the Small Loans Act is under review, and that the Department of Consumer and Corporate Affairs intends to bring another law before Parliament. I would trust that consideration would be given to that question in those circumstances, and if loan sharking is viewed as a very serious offence, there is a good possibility that a proposal may come forward suggesting that it may be prosecuted, for instance, by indictment or as a summary conviction offence. But I cannot answer that question. I would prefer the government to answer it.

Senator Neiman: But in the first instance you are asking that this wiretapping legislation cover all kinds of indictable offences. Now you go one step further, and are opening the door to many other offences, of which we have no real concept at the moment, being prosecuted by way of summary conviction. You are changing the definition of organized crime in a very broad way. You have commented that this may be more easily understood by a court, and certainly I grant the courts the wisdom and intelligence to understand this sort of thing, but I am saying that the police, by definition, can take this far, far beyond what is necessary for the protection of the public in the ordinary sense. In clause 6 we find the following:

... part of a pattern of criminal activity, planned and organized by a number of persons acting in concert ...

The present section reads as follows:

... reasonable and probable grounds to believe that it forms a pattern of similar or related offences by two or more persons acting in concert, and that such pattern is part of the activities of organized crime;

You could, I suppose, have a gang of kids getting together to steal tires off trucks, and if the pattern is there they could, by definition, come within this section. My real concern is that you are broadening the section far beyond what is necessary for the protection of the public.

Mr. Landry: My terms of reference limit to some degree the extent to which I may enter into debate here.

Senator Neiman: I appreciate that, Mr. Landry.

Mr. Landry: I really would not like to debate the question. However, I believe that, as you put it, a bunch of kids could form an organization of criminals. They may be involved in summary conviction offences, but they may be

committing these offences to gather funds to commit more important crimes.

Senator Neiman: That is pure imagination.

Mr. Landry: I admit that I have never seen such a situation.

Senator Godfrey: How could you convince the judge that because they are stealing tires they are doing it with the intention of ultimately going into trafficking in heroin? They are just a bunch of kids.

Mr. Landry: I would like to point out that you should bear in mind the final words of the section. The activities that form the basis of your wiretapping operation must be believed to be:

... part of a pattern of criminal activity, planned and organized by a number of persons acting in concert, in furtherance of the commission of crime involving one or more offences created by an Act of Parliament for which an offender may be prosecuted by indictment:...

You are opening up by means of summary conviction, but you are closing by indictment. What you are looking at is the indictable offences that these people may be involved in, but you open the door through the possibility of summary convictions. We open up with summary conviction, but we must convince the court that at the end of the day what you are looking at is the last part. It is a matter of exercise of discretion by the courts, and of bringing sufficient material to a court in order to obtain this kind of warrant.

I want to stress that I do not see this last part as being an easy provision to comply with when you come before a court with an affidavit. It will be difficult to convince a judge of all the elements that are necessary to obtain an authorization under this definition in relation to organized crime, because it involves a large number of them.

In the light of our experience with the courts in the past, I can say that even in the case of a specific crime there are plenty of problems in convincing the court. These affidavits are rather lengthy. We are not talking here of a one-page affidavit, but of very lengthy affidavits, with quite a large number of circumstances described. We would expect the trend to continue in this way.

On the basis of the present legislation, unless I am grossly mistaken, the information that I have is that no wiretap warrant is obtained for organized crime. There are other reasons for that which I will go into when we deal with the notification problem.

You have heard about the Vegas project in 1968, 1969, carried out by the provincial police in Quebec, which brought out very important evidence leading to the tainted meat matter in Quebec, and to the Cotroni matter in New York, which concerned cocaine. The Vegas project was connected with alleged organized crime, on the south shore of Montreal.

You have also no doubt heard of the name of Mr. d'Has-tie. Wiretapping in these cases gave the police very important information which I believe was properly used at that time, and which led to convictions of important people in alleged organized crime.

Up to this time, with the way the section is framed, it has been found to be extremely difficult to convince a court that a given person is involved in organized crime, because

that in itself has no definition, while at the same time other words used here do have definitions that the court can understand, and we can appreciate what tests we have to meet.

The Deputy Chairman: Are there any other questions on that point? For example, to help Senator Croll's peace of mind, do we understand that there is no penalty for loan sharking yet in any act?

Mr. Landry: No. There is.

The Deputy Chairman: All right. Well, this is what Senator Croll was getting at.

Senator Croll: Mr. Chairman, if you have read the record, you will know that five or six years ago we recommended that something be done about loan sharking and about the loans act. The government has been delinquent in that regard.

The Deputy Chairman: Well, that is exactly what I thought was of concern to you. Are there any other questions?

Senator Hastings: Mr. Chairman, the witness mentioned something like 60 loan sharking convictions in the city of Montreal since 1972.

Mr. Landry: Since 1972. I was the first, in 1967-68, to prosecute a small loan violation, and I discovered that act. There has been strong enforcement in Montreal as a result of the creation of a special squad.

Senator Hastings: Was wiretapping used in respect of the 60 convictions for loan sharking?

Mr. Landry: No.

Senator Hastings: You did quite well without it.

Mr. Landry: We could have done better with it.

Senator Hastings: Sixty convictions is a fair record in three years, without wiretapping.

Mr. Landry: I can say that there was no wiretapping used to secure evidence of loan sharking; but when you look at the statistics that are published—I have in mind those published by the solicitor general, but I presume the same remarks might apply to those published by the provinces—you find that the number of offences which have been disclosed indirectly as a result of the use of wiretapping is greater than the number of those for which wiretapping warrants were specifically granted. There are many prosecutions occurring as a result of derivative evidence properly obtained from wiretapping for offences for which you could not obtain wiretapping authorization, and this is quite apparent in the statistics published. So although I say there has been no interception on the basis of small loans violations, I cannot at this time state whether or not derivative evidence obtained from properly issued wiretap authorization was or was not used to go after specific loan sharking.

The Deputy Chairman: Any further questions on that point?

Senator Flynn: Do you think in Ontario they would be able to go after loan sharks with this amendment?

Mr. Landry: You must bear in mind that I have used the example of loan sharking simply to illustrate the meaning of the legislation, but basically what you need is police

work to identify loan sharks. Before you even think of wiretapping you must have some idea as to who is loan sharking, because you do not plug yourself into Bell Telephone in Toronto and listen to all the lines.

Senator Croll: But there have been some successful prosecutions for loan sharking in Toronto—not many, but some.

The Deputy Chairman: Are there any further questions on that particular point before coming to the second point made by Mr. Landry, namely on clause 178.13?

Mr. Landry: Just to clear the record, Mr. Chairman, I want to emphasize that I have used the example of loan sharking, but this was not designed specifically for loan sharking; it was designed for something quite different. I used loan sharking simply as an illustration.

Senator Hastings: You say you secured 60 convictions in the city of Montreal without wiretapping, but that you may have got evidence while wiretapping concerned with other alleged offences which enabled you to proceed with these.

Mr. Landry: I don't know.

Senator Hastings: But it could have been that way?

Mr. Landry: I say that one could imagine the possibility, and it is strictly a hypothesis, that when you are listening on the telephone line of a heroin pusher and you hear him say, "I need money so I will have to go back to the person handling my loan-sharking operation for funds," then you have the identification of a loan shark and you start working on that person through the normal means of investigation available.

Senator Hastings: But did you not get that evidence illegally?

Mr. Landry: No, when you are listening, you are plugged into the line, and if you are doing it lawfully as a result of an authorization, then you are not shutting your ears when the person speaking deals with other things—fortunately or unfortunately—and you may gather a substantial amount of information about other possible crimes, which is exactly what is happening, as you can see from the statistics. There are more prosecutions following wiretapping for crimes other than those for which one was doing the wiretapping.

Senator Flynn: Would you use this wiretapping evidence directly in the prosecution of a summary conviction? I can understand that if you are listening in on the line of somebody who is dealing in heroin and you hear the name of a loan shark being mentioned and you go after him using the normal methods available, you may not use directly the evidence obtained by wiretapping.

Mr. Landry: You could, if it was of any value.

Senator Flynn: But would it be possible to use it?

Mr. Landry: Yes.

Senator Flynn: Directly?

Mr. Landry: Yes, provided the original authorization was lawful.

Senator Croll: While we are on that and following from the question that Senator Flynn just asked, would you

read the explanation at the bottom of the page opposite page 39? It follows from what we have been discussing.

Mr. Landry: Well, in section 178.13 there is one word, as you have seen from the explanatory note, and that is the word "or" in paragraph (1)(b) where it says:

(b) other investigative procedures are unlikely to succeed; or

(c) the urgency of the matter is such . . .

It appears that in the record of the House of Commons the word there is "and" although the text published by the Queen's Printer reads "or". This is simply designed to put back the word "or" which it was originally intended to put in in that place. That makes the language of that section correspond with section 178.12(1)(g), where you have similar language including the word "or". It appears that in the records of the Clerk of Parliament there is a mistake somewhere. That is editorial in nature in some way, even if it has a consequence in some other way.

The other part only relates to an extension. At this time you may have an authorization for 30 days and then renew after that 30 days is up. It was found that on the average the period for the wiretap was extending to a little over 65 or 67 days, so it was suggested to widen the possibility of granting this authorization to 60 days, which will eliminate a large number of renewals which are obtained anyway at this time.

The Deputy Chairman: That was the only change, and that was number two which you mentioned. Can we come now to number three which is really important—the admissibility of evidence?

Mr. Landry: At the outset I would like to state that admissibility of evidence in Canada has never been related to the means by which the evidence may have been obtained. For example, there is the area concerned with the statement of an accused, or let us call it a confession. The confession of an accused obtained after his arrest will be admissible in evidence only if given freely and voluntarily. The Supreme Court of Canada long ago decided that if one should obtain a confession, even by force, threat or otherwise, that confession is not admissible. That is quite clear. But, if as a result of that confession, a murderer or an alleged murderer tells you, "I threw the gun away here in the Ottawa River, right by the second pier of the Interprovincial Bridge," and you go down there and find the gun and you make your ballistics test and find it is the gun that was used on the victim, the courts have held that, notwithstanding that the confession was inadmissible, you will be able to put in evidence the fact that the accused knew where the gun was. So that the derivative evidence, even from a confession, has always been found in Canada to be admissible. And I believe that in common law there is no rule for the exclusion of evidence by reason of the fact that that may have been obtained unlawfully. In fact, the common law rule is one that the laymen may understand very well. It is simply this: If the means of finding the evidence was through the commission of an offence, a charge would be laid. You may lose your job if you did not perform according to the rules of law. However, the fact that the evidence is there is not something which will be suppressed, as more emphasis will be placed on getting at the truth of the matter than the form through which the evidence was obtained. An example of the manner in which the rule is applied in the United States is if, for

instance, I know that two persons have two pounds of heroin on a table in an apartment, I know that that is going to move out of there very quickly and unless I move right away I will lose my evidence, so I go through that door without a search warrant and I find the persons actually handling the heroin. On a motion to suppress, that evidence will not be admissible. Now, without arguing the matter, I must say that laymen in the United States have difficulty in understanding why in such a case a court cannot take cognizance of the fact that these people actually had that heroin in their hands because the police officer entered illegally. Some hold the view—I am not saying that I hold it, because that would be arguing—that it is more a matter for disciplinary action against the police than for the citizen to prevent their seeing that justice is done. We could argue this matter, but from my own impressions I feel that many of the citizens of this country and laymen have difficulty in understanding why in such circumstances the heroin would not be admissible in evidence. There is the reported case in the United States of the heroin in the diaper of a baby. The police entered an apartment legally, found a couple there but did not find any heroin in the apartment. They then searched the baby and it was held that that infringed the civil rights of that baby and the evidence found in the diaper of the baby was suppressed. You try to explain that to laymen and they do not understand. Lawyers will understand, because it becomes some kind of a legal fiction: It is there, yes, but do not look at it, close your mind to it. That is rather difficult.

In connection with wiretapping in Canada, we have adopted a law which is contrary to the common law rule which has been admitted in this country. We decided when this law was passed that evidence obtained through an unlawful wiretap—now, bear in mind that an unlawful wiretap may involve a police officer going without an authorization...

Senator Croll: Do not use the word "illegal" when Senator Flynn is around.

Senator Flynn: Oh, yes, you can use it because I understand what it is.

The Deputy Chairman: Having settled that, please carry on, Mr. Landry.

Mr. Landry: In the absence of authorization, it is unlawful. An authorization may have been issued but, for some reason, it is found to be faulty. Although the judge granted the authorization, he signed it in the wrong place. However, that is an exaggeration. If there is a defect of some kind, the evidence is also inadmissible because then the authorization is not properly issued. So it has been decided that the tapes would not be admissible in evidence. An example would be if I were to listen to tapes and the suspect say, "At four o'clock I am going to meet you on the corner of Dorchester and Peel, and I am going to deliver the suits to you"—they will not say, "the heroin"—and I, a police officer, ask my surveillance team to organize surveillance of that individual. We follow the individual from his residence and he has a package. We follow him right through to the corner of Peel and Dorchester, and there we wait. Then another individual comes by and there is an exchange of the package. We see an envelope changing hands. Then, as they say, we jump on the two persons right then and there and find two pounds of heroin in the possession of one and \$25,000 in the possession of the other. We have observed these facts because we have, through an unlawful tap, found that they were to meet at that street

corner. That is the end of the matter and we must say, "Gentlemen, sorry; go home, we cannot prosecute you".

Senator Flynn: Is that the situation under the law now?

Mr. Landry: Under the law now, because the derivative evidence is not admissible and that is derivative evidence, or evidence which is found as a result of a wiretap. However, there is another situation which may even be worse than that. I am a police officer and one of you is an informer supplying me with information from time to time. I do not control you. You happen to know that some of your friends are going to meet in a room, and you arrange to conceal yourself. You are not present in the room, but in the adjoining room and you listen to that conversation. You are the informer, not a police officer. Now, you find out about what they are up to and tell me, the police officer, that if I watch these people carefully I will find that they are going to meet on the corner of Dorchester and Peel. I go there and find the same facts as I have described to you. If it is found that the basic information that led me there came from an informer who obtained it unlawfully, by putting his ear to the wall, that is also derivative evidence and I cannot use it.

In some cases in the United States lawyers for the defence go on fishing expeditions in an endeavour to find out if throughout the process of the specific investigation there was in some way an unlawful interception. This is where the rule of inadmissibility of derivative evidence leads us. You may be able to explain to the citizens of this country that this is quite a proper rule, that the person found in *flagrante delicto*, in possession of the drugs in those circumstances, will go free. However, I have found in my own work with police officers, for instance, that they understand that with great difficulty, that the laymen who come to testify in matters will understand that with great difficulty. Lawyers do understand it, because they can follow the trend of the legal fiction of the fruit of the poison tree doctrine.

Senator Croll: But are you not asking us today to wave goodbye to almost a thousand years of tradition with respect to admissible evidence and start on a new course?

Mr. Landry: Senator, it is exactly the other way around. We waved goodbye to the common law rule in 1974.

Senator Croll: Yes, with some regret we did, but we are now extending it so much further that the other one becomes meaningless.

Mr. Landry: Oh, no; it is now proposed that if you are listening in unlawfully you will not be able to use the tapes in court; that conversation is out. So there are two sanctions for having listened unlawfully and you may not use the evidence *per se*. However, should you find out about that proposed meeting at four o'clock on the corner of Dorchester and Peel you will not be prevented from prosecuting the individuals as a result of the investigation that you carry out on the information obtained on that wire tap. The derivative evidence will be admissible, but the tapes themselves will not be admissible.

Senator Flynn: Only the tapes will not be admissible?

Mr. Landry: That is right.

Senator Croll: For what was done improperly, you reward.

Mr. Landry: Whom do you reward?

Senator Flynn: It may be illegal if you were in that room without authorization, but I do not see why you would not be able to use that evidence.

Senator Smith (Colchester): I would ask the question, why do you not go all the way and make the tapes admissible, so that you are in conformity with the general common law in these matters?

Mr. Landry: Senator, I do not know the rules of this place. That may be a motion or suggestion that you may be allowed to make. I do not know. But I myself . . .

Senator Godfrey: We cannot ask a question of policy.

Mr. Landry: I am servant of the government.

Senator Smith (Colchester): Surely we can ask what were the reasons which led to stopping here, where the amendment stops, rather than going all the way. What are the reasons which led to the restriction on the use of this particular kind of tape?

The Deputy Chairman: Excuse me, I think you will have to restrict that to practical reasons. Certainly anything involving policy cannot be asked of Mr. Landry.

Senator Smith (Colchester): I only want to know what were the reasons.

Mr. Landry: Even on the practical side, the reasons are still policy.

Senator Smith (Colchester): If the chairman rules that way, I will accept it.

The Deputy Chairman: After all, the question asks why the government bill makes this change, and obviously that is a matter for the minister.

Senator Smith (Colchester): But in order to understand it, we have to know the reasons.

The Deputy Chairman: We could get that from the minister. In each instance we have to bring in the minister if it becomes a matter of policy.

Senator Flynn: But the witness can tell us what was the general feeling that suggested the amendment. He does not have to give us the reasoning of the minister.

The Deputy Chairman: If he sticks to the practical considerations, that is fine.

Senator Smith (Colchester): He has been free in giving the reasons for the change. I am asking what were the reasons for not making the change greater.

Mr. Landry: On the practical considerations, there may have been representations received from various quarters about the derivative evidence rule, which under the present law is being made inadmissible, and the criticism may have been sufficient for the policy makers to decide to make this change. There may have been various arguments voiced, or reasons made known, to the policy maker to go even as far as you have just suggested, but they may not have been sufficient for the policy maker to move the whole way.

Senator Smith (Colchester): I understand that perfectly—or, at least, I think I do, even through I might not agree with it. Are there any practical considerations which would make it difficult to go the whole way and allow the tapes to be used?

Mr. Landry: On the practical side there is no problem with going the whole way. It is strictly a question of policy for the government to decide whether it wishes to keep that sanction, if one may call it that, or to remove it.

Senator Flynn: The fact is, Mr. Chairman, that wiretapping has become such general practice that at one time it was decided they would have to restrict its use because everyone could be spied on for any motive. I think that was the beginning of the restriction on wiretapping. We have gone a little too far, and we are now coming back, in reverse. Is that so?

Mr. Landry: I am listening to your remarks, senator, with interest.

Senator Flynn: But you could tell us. This is the trend, after all.

Mr. Landry: We are coming back to the common law rule.

Senator Neiman: We are also encountering all sorts of pressure, as everyone knows, from the civil liberties groups, which feel that we are going too far. It would seem to me that the government is trying to find middle ground somewhere that will satisfy all facets of society.

The Deputy Chairman: Perhaps that is so. I would now ask all you defence lawyers, or former defence lawyers, whether you agree with the present state of the common law as stated by Mr. Landry.

Senator Flynn: Oh yes. What is the definition of "wiretapping"?

Mr. Saul Froomkin, Director, Criminal Law section, Department of Justice: Section 178.1 of the present act says:

"intercept" includes listen to, record or acquire a communication or acquire the substance, meaning or purport thereof;

It says also:

"electromagnetic, acoustic, mechanical or other device" means any device or apparatus that is used or is capable of being used to intercept a private communication, but does not include a hearing aid used to correct subnormal hearing of the user to not better than normal hearing;

It then goes into the offence provisions.

The Deputy Chairman: That is section 178.1.

Senator Flynn: Then you cannot record a conversation with a tape recorder, either hidden or on a person?

Mr. Landry: When in a room, provided someone is agreeable, or consents to that being done, yes, you may.

Senator Flynn: If the person is not aware of the presence of the tape recorder, that would be illegal wiretapping.

Mr. Froomkin: If the person who was doing it was not present. If you placed a listening device in someone else's room and you were not present, that would be unlawful. If, on the other hand, you were present at a meeting and you wanted to record surreptitiously that meeting, that would not be illegal, because it would be with the consent of the originator or of one of the parties.

Senator Flynn: If I am present and the person does not realize that I am recording the conversation . . .

Mr. Froomkin: That is not unlawful.

Senator Flynn: One could have a small tape recorder. The difference is rather subtle, don't you think?

Mr. Landry: The party to whom you are talking accepts that you should be in a position to hear his words. You may refer to your memory to recall those words. Reference to a technical device to help your memory would not make much difference, but the technical device would be more reliable. If I agree to speak to you and you are recording every word I say, it would help your memory.

Senator Flynn: But I can do that on the telephone.

Mr. Landry: The legislation covering Bell Canada provides that you may not do that unless you have what I call a beeper. Other than that, it would be a technical violation of the Bell Canada legislation.

Senator Flynn: So if a person wants to obtain some evidence, telephones someone else, speaks to that person, and the conversation is recorded, that recording could be used in a criminal case or in a civil case. I was wondering about this question of illegal wiretap evidence. In a civil case, how do you think it could apply in influencing the civil court's operation?

Mr. Landry: Wiretap evidence is admissible in civil matters within federal jurisdiction.

Senator Flynn: Evidence obtained from an illegal wiretap is admissible?

Mr. Landry: No.

Senator Flynn: I was directing my question to the admissibility of evidence obtained from illegal wiretaps in civil matters, or under the civil law.

Mr. Landry: There are recourses provided. First of all, there is a possible penalty in the law by way of a fine of \$5,000.

Senator Flynn: I understand there is that penalty. I am wondering if evidence, by the mere fact that it was illegally obtained, would be inadmissible in a civil action?

Mr. Froomkin: If I may assist you, Senator Flynn, my understanding is that in a civil case, which would be, of course, under provincial jurisdiction, evidence illegally obtained would be admissible. The common law rule comes into play. If the provinces wanted to restrict such evidence, they would have to pass legislation. The way it stands now, you resort to the common law rule, except in the province of Quebec, and evidence illegally obtained, if relevant, subject to the discretion of the court, is admissible.

Senator Flynn: The only recourse would be a prosecution under the Criminal Code?

Mr. Froomkin: Yes, or a civil suit on the ground of trespass, perhaps, depending upon the circumstances.

Senator Smith (Colchester): I should like to ask one question, if I may, on more or less a comparative basis. For purposes of my question, let us suppose that in a criminal investigation a policeman breaks into a building and it legally takes possession of a typewriter, types a letter on a piece of paper, and then takes away both the typewriter

and the letter without the consent of the owner, again committing a crime. As I understand it, both the typewriter and the letter would be admissible in evidence.

Mr. Landry: Yes.

Senator Smith (Colchester): But if the same rule as contained in this particular proposed section applied, neither one would be admissible in evidence.

Mr. Landry: We have not passed on the rule respecting wiretapping to any other type of unlawfully obtained evidence. That evidence would still be admissible. This only deals with evidence obtained as a result of wiretapping.

Senator Neiman: It just applies to electronic evidence?

Mr. Froomkin: Yes.

The Deputy Chairman: Are there any other questions on this point?

Senator Godfrey: I should like to deal with the proposed elimination of notification in the case of wiretaps.

Mr. Landry: On the question of notice, the law, as it presently exists, obliges the solicitor general, or the attorney general of the province in question, to notify a person within 90 days after an intercept has terminated. If the authorities have had an intercept in place for 30 days, within 90 days of terminating that intercept, the subject of the intercept must be notified, unless a court, for reasons that are indicated, grants leave to await a certain period of time before notification is given.

Senator Godfrey: As I recall, there can only be one extension granted.

Mr. Landry: This would depend on the interpretation given by judges. That is one of the problems I want to deal with.

As the law is presently framed, it is not mandatory for the court, on hearing argument for extending the period of notification, to grant an extension. It is not that being at the mercy of the court is wrong. That should be a comfortable position for any citizen to be in. Nevertheless, there may be instances where it is felt that it is extremely important not to divulge the fact that an intercept has taken place and where the court may refuse a request for an extension.

The basic reason alleged for eliminating the notification requirement deals strictly with police problems. Perhaps I can give the committee a number of illustrations to demonstrate the necessity of eliminating the requirement for notification in some cases.

The Deputy Chairman: If I may interject, we did have a lot of evidence before this very committee on that point back in 1973.

Senator Smith (Colchester): Some of us were not here then.

The Deputy Chairman: I am not suggesting that you should not deal with this matter. I simply mention that to indicate that we do know something about the problem.

Mr. Landry: There are specific problems which we have encountered as a result of the notification requirement. I personally have experienced a number of situations and was quite concerned on a number of occasions as to whether the court would grant the requested extension.

Taking as an example a wiretap on a heroin dealer, the subject of the intercept may be undertaking a transaction involving heroin with a person in Marseille, or through intermediaries, with whom he discusses the proposed deal over the telephone, or otherwise—perhaps in hotel rooms—for a period of two or three weeks, at the end of which he decides to go on holidays. He may go to Acapulco or to Côte d'Azur in France. The authorization for wiretap surveillance was for a period of 30 days, and let's assume there was one extension of 30 days, during which time the subject was away on holidays. Because nothing transpired during that second period, there is no ground upon which the police authority could ask a judge for a further extension. There would be no additional evidence obtained during the second phase of the intercept.

That is one circumstance. Another might be that, for some reason or another, the deal falls through. Notwithstanding the persons are not dealing, you know that the subject of the wiretap is a heroin dealer. It may be six months until he becomes involved in another transaction. If the authority, under those circumstances, has to notify the subject that his conversations have been intercepted, he will obviously become aware that the authorities suspect him of dealing in heroin and will put him on notice as to how he handles his activities in the future.

A further problem arises in that in certain situations there may be four or five suspects, resulting in four or five authorizations to wiretap being granted. At the end of 30 days, the authorities suddenly realize that one of the suspects, although he may be a good friend of the other four, is not involved, so the authorization is not renewed in respect of that individual, but is continued against the other four. At the expiration of 90 days after the termination of the intercept, you have to advise the person against whom the intercept was discontinued that he was the subject of an intercept.

If he is suspicious in any way, shape or form, he may feel that because you conducted an intercept on him, you likely do so on his friends, and he will notify his friends of the fact that he was intercepted and that they had better watch out.

We have actually encountered problems such as I have outlined. The requirement for notification adds a very complicating factor. Of course, the authorities can go before a court for an extension of the time to give notification in such a circumstance, but there were cases involving lengthy wiretaps—I am thinking of cases in Vancouver, particularly—and in those circumstances, the police authorities are more or less at the mercy of the courts in respect of the notification requirement, and giving notification may very seriously hamper the police in the furtherance of their investigation against the individuals involved. There have been these difficulties.

Senator Godfrey: I did not understand. Have the judges actually turned down an application.

Mr. Landry: I do not know, except that there was one case reported where notification was granted to an individual who then advised his friends. The police were just about to get authorization to work on those persons but decided not to do so because they were all notified that they were known to the police, or could be suspected, because the first person had been notified.

Senator Godfrey: In that case had the police made an application?

Mr. Landry: There was one authorization going on; they intercepted conversations and decided to drop the matter, but they decided they would follow through against a number of other individuals. They gave notification to the first man; he advised his friends to watch out for the police because they may be under surveillance. As a matter of fact, they were not electronic surveillance at that time, but it was intended to obtain authorization for it. However, the police did not do so because it would have been worthless for them to follow it through.

Senator Godfrey: In that case, did they go to the judge and ask for an extension on the first person and have it turned down?

Mr. Landry: I would have to refer to the notes to see exactly what happened.

Senator Godfrey: Could you do that?

Mr. Landry: Yes.

Senator Godfrey: I would like to know if there is any specific case in which a judge has turned somebody down.

Mr. Landry: Perhaps I can keep that question in mind.

Senator Godfrey: It is a key one.

Mr. Landry: We will come back to it.

There are these problems. There is also organized crime. We know of occasions when persons from Canada, or persons from abroad who are in Canada, may believe that they are not suspected by the police; they do not have a criminal record and have no reason to suspect that the police know about them. Nevertheless, they may be involved in organized crime. The police have not attempted to obtain warrants in respect of organized crime because, outside of the legal problems I have previously indicated, there is the further problem that with organized crime you may start by working on one individual for a period of time and then drop that for a while because you know there will not be any further activity for three, four or five months. Then, for some reason, you start working on it again. If the person concerned is given some notification that you are aware of his presence—because you would have to be suspicious to get an authorization in the first place and have good reasons—he is then on notice, and because of that there is not much point in the police attempting to obtain a further authorization in respect of that person.

The police claim that that has hampered their work with respect to organized crime; that they were more successful in dealing with organized crime prior to the passage of the act than they have been since. Now they have a tendency to go for specific violations and specific investigations instead of seeking to obtain more intelligence. The notification raises those problems.

The Deputy Chairman: Senator Croll, you were at the meeting when we discussed this.

Senator Godfrey: Senator Croll was the mover of the motion to strike it out.

Senator Croll: Yes. Were you and I on the same side then?

Senator Godfrey: No, we were not, because I thought the job of the Senate was to improve a clause, not to strike it out; I thought it should have been amended.

The Deputy Chairman: In any event, Senator Croll has a question to ask.

Senator Croll: I would like to see some statistics on the number of wiretaps in the country generally. I have not seen any. More particularly, I should like to know the number of times that it would have been necessary to notify and the judge gave you leave not to notify, and the number of times they refused you leave and said you must notify. Those statistics must be available in the department, I would think; before you came to some conclusions you must have looked at them. Can you make them available to us?

Senator McIlraith: I have one point on that question. I understood Senator Croll to refer to the number of cases in which a judge gave permission not to notify. The act gives authority merely to defer the time of the notification.

Senator Croll: I think you understood my question, did you not?

Mr. Landry: Yes.

The Deputy Chairman: Would you have those statistics?

Mr. Landry: We have the Solicitor General's statistics and I have seen some of the Attorney General's statistics, but I have not seen the overall picture summarized in one document. In the case I was alluding to a moment ago, it does not appear that there was a request for an extension. The police went ahead and gave the notification, as they had to do by law. Whether this was expected or unexpected on their part, that move meant that the friends of the person involved were alerted and it hampered the police investigation. They may not have thought about this, but they found out afterwards that this had happened.

Senator Asselin: Are you satisfied with the law that we have now?

Mr. Landry: At the moment we have to give notification. As was pointed out, the court may grant us an extension but may not allow us simply not to give notification; we have to give it on one day or another.

A heroin investigation started in November, 1971, before the act. In January, 1972, the police made some arrests; they did not disclose their wiretap evidence and the suspect did not know that there was a wiretap. The matter was dropped but they maintained surveillance. In August, 1972, another deal started "cooking" and they continued their surveillance until January, 1973, when 70 pounds of heroin was seized. If we had had to give notification there would have been a period from January, 1972, to August, 1972, when we would have had to rely on an authorization of the court not to give notification. But what could we tell the court? We could tell the court, "We suspect these are heroin dealers. One deal fell through; it was not working. But be patient, they are going to be involved again." The court will ask, "How can you say that?" You may know that this is the business of these people, but it may be difficult to reach the stage at which you can convince a court to act judicially on such hints. We are not asking to be able to continue the wire tap through the six months, but simply not to have to give notification.

Senator Asselin: Never?

Mr. Landry: Never. Thus, if a situation arises after six months we may go back and obtain another authorization, and that person will not suspect at that stage.

Senator Croll: How would any of us know?

Senator Neiman: I should like to obtain two pieces of information from the witnesses. I should like to know how many cases there have been, since the passage of the previous act, C-176, two years ago, of persons being wiretapped and subsequently the wiretap being abandoned because the police decided there was no case.

Mr. Landry: With no result whatsoever.

Senator Neiman: I would like to know that, and I would also like to know how many people have been notified that they were wiretapped, under the section of the act as it now stands.

The Deputy Chairman: I do not know whether this will help all concerned but it will, at least, go part way. The document I am looking at is entitled "Peace and Security, Protection Against Violent Crime," put out by the Solicitor General. On page 31 it says this:

Under existing law, an authorization is valid for a period not exceeding thirty days and can be renewed for another thirty days. According to the Annual Report of the Solicitor General, the average period for which authorizations were given and for which renewals were granted in 1975 was 54.1 days. On the 1974 report, this figure was 68.96 days.

This will, of course, not answer all the inquiries of Senators Croll and Neiman, but that may be a start in the right direction.

Senator Croll: Which was the longer in terms of days, the first or the second year?

The Deputy Chairman: The second.

Senator Croll: The second year was the longer. All right.

Senator Hastings: I would add one question to that asked by Senator Neiman and that is: How many times were wiretaps refused?

Mr. Froomkin: How many times were wiretaps refused?

Senator Hastings: How many times were applications refused by judges?

Mr. Landry: On the Solicitor General's part, there is one instance of an original wiretap application, for the year 1975. There is one instance of an authorization refused and there are two instances of a renewal being refused.

Senator Croll: Where was that, what province?

Mr. Landry: This is for the Solicitor General; therefore, those would be authorizations for narcotics and acts that are enforced by the RCMP and the Attorney General of Canada. The Solicitor General reports on those intercepts. He does not report on intercepts for the provincial level. We have that readily available.

The Deputy Chairman: You are reading from the report of the Solicitor General, the 1975 annual report.

Mr. Landry: I doubt very much that we have available at this time the figures for the provinces, as I received only yesterday (a) report from Newfoundland. I do not know if

the reports from other provinces have been received. I want to follow that up.

You must bear in mind that I came today on somewhat short notice and I am sorry for not being in a position to answer those specific questions. I have been looking for the statistics of the provinces, and I happened to notice yesterday that we had just received the report from Newfoundland.

The Criminal Code does not provide for federal publication of the provincial wiretap applications and statistics. It provides for the Solicitor General filing his report with government, or before Parliament.

Senator Hastings: You say you must notify 90 days after you have ceased the wiretap. You used the words that the court may grant a certain length of extension. Can you tell me what "certain" means?

Mr. Landry: Those are my words. The law states, in section 178.23:

... a delay of a determinate reasonable length be granted, ...

Senator Hastings: Which could be six months.

Mr. Froomkin: You run into a problem, sir, when you have a heroin dealer from Marseilles coming to Montreal, for example, to negotiate with known heroin dealers. An authorization is obtained, and overheard in the conversation is the fact that the deal feel through and the heroin dealers in Montreal say, "Look, we are going to deal with someone else in the next couple of weeks. We can get a better price than we can from you." The Marseilles dealer goes back to Marseilles, and if you notify him, whether it is today or tomorrow or in three months or in six months, he is obviously going to advise his colleague in Montreal. You then wipe out the whole investigation. That is where the difficulty really arises, where giving notification at any time will just destroy a whole investigative procedure in respect of very important areas of crime in this country.

Senator Godfrey: I recall when this came up previously in this committee. I was not a member of the committee but I attended the hearings. We had evidence from Chief Harold Adamson who spoke on behalf of the Association of Chiefs of Police. I would like to now refer to that evidence.

The deputy Chairman: Yes, I recall it very distinctly.

Senator Godfrey: I am quoting now from the record of the proceedings on December 13, 1973, at page 14:8:

An effect of that section of the bill, as presently drafted,—And he had given the evidence to the effect that what he was worried about was you could only get one extension of the time for notification and it had to be for a determinate amount of time. You would not know how long it might have to be, and you would get one for three months or six months and it then turned out you needed it for a year, and you could not get another one because the ruling which we had—there may be some argument about it—was that you could only get one. I believe that was it.

He goes on to say:

Would be that in the next twelve months Canada's top criminals would receive such notification enabling them to take necessary evasive measures to avoid further detection and so escape law and order.

He is agreeing with what you have said today, and I think we probably all agree with that.

This is the important part. He said,

It would therefore seem reasonable to amend this section, ...

He said "amend" it, not "eliminate" it.

... giving the judge the discretion of determining whether or not the person under surveillance should be notified, ...

He says notified at all, not just for postponement, notified at all.

... with the proviso that, if the judge is satisfied that this person is implicated in criminal activity, then such notice shall not be given.

Then, further on Senator Croll seems to be a little put out by the fact that the chief of police was prepared to compromise, and Senator

Croll says this:

That is so. I do not understand why you suddenly decided to compromise in your last paragraph. Either that section has meaning and purpose or it has not.

As you may remember, later Senator Croll moved to strike the whole thing out.

Mr. Adamson then said:

All through the debates in the House of Commons I saw the point being made by members, "We have to control the police". We have no aversion to this but we think it is reasonable, if the government is that concerned over our activities in wiretapping, that we be fully accountable, but, surely, a judge should be able to determine whether a man or woman should be told whether or not the line is being tapped, if we have not sufficient information to charge them? If we have to tell every criminal that his line is being tapped, that will, in effect, eliminate us from wiretapping.

Further on he again says:

We do not mind the controls or the accountability factor, but please don't eliminate our efficiency in this field.

In other words, the evidence at that time was that they would be satisfied with an amendment to the bill which would permit you to go and get an order permanently, eliminating the necessity of notification.

The Deputy Chairman: Was the suggestion not for a determinate period?

Senator Godfrey: Chief Adamson said, "If you amend this bill so that the judge can eliminate the necessity completely, we would be satisfied".

Senator Asselin: It is still without the notification.

Senator Godfrey: Without the notification. He said that they do not need the section eliminated, that "we are quite satisfied that we can go back to a judge and convince him, in the cases you have mentioned, that this is not right, and he can give a permanent order". That was the difficulty.

Later on I made an objection—when the proposal was made by Senator Croll to eliminate the section completely: Why do we not accept Chief Adamson's compromise? I wrote a letter to the paper on the subject later.

What I want to know is, if Chief Adamson is satisfied with that provision—and he is representing all the chiefs of police of Canada—why you now want to eliminate the section entirely when the chiefs of police are quite happy to go to the judges and convince them, in all the cases you have mentioned . . .

Mr. Landry: This was the position of Chief Adamson in 1973. However, it may be interesting to know Chief Adamson's views now and whether they have changed at the moment based on the experience of the police forces up to the present time. All I can say to that is that the government, as a matter of policy and as a result of representations received from various persons, including the chiefs of police, has decided to follow this course instead of the possible half-way solution.

Senator Godfrey: I presume the police would always like to eliminate it entirely as a bit of a nuisance, but did you get evidence from Chief Adamson himself on this point? Surely all of the objections you have would be satisfied by being able to obtain an order from the judge?

Mr. Froomkin: I am sure representations were obtained from all sorts of sources on this particular area. I do not believe he is the president of the association any more, though.

Senator Godfrey: I think we should have Chief Adamson back, because he is an acknowledged leading expert and because we should find out from him why he has changed his mind, if he has changed his mind. Secondly, I believe we should hear from the chiefs of police themselves, because we want to know the specific instances which have changed their minds since their representations through Chief Adamson.

Senator Flynn: It would certainly be interesting to hear from Chief Adamson, because apparently he is the only police chief who is in favour of the abolition of capital punishment.

The Deputy Chairman: In any event, we will take that under consideration. If there are no further questions on this most interesting topic, I would suggest that we adjourn now for lunch rather than interrupt the continuity of the next topic.

Hon. Senators: Agreed.

The committee adjourned.

The committee resumed at 2.30 p.m.

The Deputy Chairman: Honourable senators, this afternoon Mr. Landry has agreed to deal with the matter of special inquiries. The page he referred to this morning, where you will find it set out, is page 47 and following.

Mr. Landry, if you would follow the same format as this morning, indicating to us the present state of the legislation and what changes are proposed, we would appreciate it very much.

Mr. Landry: First of all, Mr. Chairman, I should refer to one of the questions which was raised this morning, about a case in the Supreme Court, and which is really an introduction to what we have here, in some respects.

The case I am referring to concerns section 19 of the Quebec Police Act. The police act of Quebec gives to the

provincial legislature, according to our interpretation, power to create a crime commission; that is, a commission which is empowered to investigate crime. It was our contention in the Supreme Court that this was legislation in relation to criminal law, and that only the federal Parliament could adopt such legislation. I am not here, of course, to plead the case, but this was the issue insofar as that case was concerned. It is our view at this time that whether or not the province is competent to enact such legislation, the federal Parliament, quite definitely has the power to enact legislation relating to the investigation of crime.

Senator Croll: Just let us understand this. Who challenged the Quebec act—the federal government?

Mr. Landry: No. Di Iorio and Fontaine were appearing before the organized crime commission of Quebec. They refused to answer questions, were found to be in contempt, and sentenced to jail.

Senator Croll: We had a crime inquiry in the province of Ontario over a certain length of time. It held numerous hearings, but nobody challenged it. The people who did not want it were very anxious, but they were stuck with it. Why did the Ontario commission not get into court?

Mr. Landry: The Ontario legislation making it possible to have what we call generally a crime commission is not worded in the same fashion as the Quebec legislation; but as a matter of fact no contestation of that legislation came about before the courts.

When Di Iorio and Fontaine proceeded upwards to contest the validity of their conviction for contempt—they had been sentenced to one year's imprisonment by the crime commission—they applied for a prerogative writ in the Superior Court of Quebec, and that application was dismissed. They then went to the appeal court, where it was also dismissed, and then they reached the level of the Supreme Court of Canada. At that time the matter of the constitutional validity of the Order in Council creating that commission was raised, and the validity of section 19 of the police act of Quebec was also raised.

The federal government, or the Attorney General of Canada, was, as is customary in such matters, served notice of the constitutional question, as were all the attorneys general of the provinces. Then the federal attorney general had to study the matter and adopt a position. The position that the attorney general brought before the Supreme Court was that section 19, as drafted, was *ultra vires* the province. The Supreme Court may find that it is *ultra vires*, or it may find that it is *intra vires*. Our position at the moment is that whatever the result of this may be it is unquestionable that the federal Parliament has competence to enact legislation in criminal law that relates to the investigation of crime. At the moment, for instance, you have legislation dealing with search warrants. Section 443 of the Criminal Code provides that a justice may issue a search warrant. That is one step in the investigation of crime that is provided for in the Criminal Code.

The contention of the federal attorney general is that only the federal Parliament can enact legislation which will affect the "rules of the game", and that the investigation of crime may only be enacted by the federal Parliament, so that police officers, when investigating crimes, have to follow the same rules all across the country, so that the rights of citizens with regard to police officers and the criminal law will be the same all across the country. However, the result of that decision, although of great

interest, would not, in our view, affect our right to enact the present proposed legislation.

Under the provincial legislation the first problem that was encountered by the commission was that witnesses, or prospective witnesses, suddenly were becoming ill outside the province, in New Brunswick, for instance, or just happened to visit relatives for lengthy periods of time outside Quebec. That commission was incompetent to compel persons, although they were residents of Quebec, who happened to be outside the province, to appear as witnesses before the commission. It has no jurisdiction beyond the confines of the province of Quebec.

This is a gap, of course, that the proposed legislation will fill, in that if there is an inquiry commission set up under the provisions of this act, that commission will, in some way, have extra-provincial jurisdiction.

When the provincial commission got into the tainted meat business, it came very quickly into the Ottawa-Hull area, with connections on both sides of the river. It could not compel witnesses from Ottawa to appear, and although it suspected violations and suspected that documents could have been found either in the Ottawa area or the Kingston area, it could not get search warrants to search in those places.

The present law provides that a commission created under these sections will have the power to obtain a warrant which, properly endorsed by the attorney general of another province, will be executed in that other province. It is therefore felt that this legislation fills a gap, at least, in those areas where such gaps were noted at the time of the organized crime commission of Quebec, and that even if Quebec has competence to enact the legislation it did enact, there is still a need for this legislation to fill that gap; so that what might happen if both pieces of legislation are to be *intra vires* will be a matter of choice for a provincial attorney general, to create the commission under either the provincial legislation or the federal legislation, depending on the objectives of the inquiry and the problems that may be encountered.

Senator Croll: How did you reach the stock salesman who left Quebec and jumped over to Ontario, and under what section? He was a stock salesman under whatever act you have there—I do not know it. He simply moved over to Ontario. How did you follow him if you could not follow the man you requested for the crime commission?

Mr. Landry: It depends what you are referring to. If you are referring simply to police work, then the police may, under the provisions of the Criminal Code, investigate all over Canada. A warrant issued in one district may be executed elsewhere through the proper endorsement. That is at the police level. We are talking here strictly of a commission of inquiry.

Senator Croll: But there have been commissions of inquiry into stock frauds from time to time in Quebec, and witnesses walked across to Ontario. Some of these were reached and some were not. Why? Do you recall?

Mr. Landry: I am afraid I am not familiar with what you are referring to. You may be referring to the securities commission.

Senator Croll: I am referring to that.

Mr. Landry: There is one in the province of Quebec, there is one in Ontario—in fact, there is one in each

province. I assume these commissions are looking after what is happening in their own territory, and may co-operate with each other in their own jurisdictions.

Senator Croll: But how do you reach the man who offends in Quebec and moves to Ontario, under the securities act?

Mr. Froomkin: By “reaching”, do you mean how is he brought before the inquiry to give evidence?

Senator Croll: How do you get him before the inquiry in Quebec? You now tell us a witness walked out and went to New Brunswick, and we know prospective witnesses did do that. There was nothing you could do, and we understand that. Somehow or other, however, the Quebec Securities Commission did reach these people. I do not know how. I am trying to find out.

Mr. Landry: Well, senator, you may be talking about a number of things. We would have to have the facts. But I can imagine this situation, where I am in Ontario and I want to sell shares in the province of Quebec. I must be licensed by that commission, so although I am living in Ontario I will have to attend before that commission if I want to get that licence. I must go there.

Senator Croll: Well, let us get back to your subject.

Senator Flynn: It is not the same type of thing. You have a commission of inquiry which may not exist in the other province. So you may have an offence in one province that may not be prosecuted in another, but you can always be got at.

The Deputy Chairman: This is intended to deal with a specific situation and not with some of those that you have been raising. By the way, I might refer to that document which your department has put out called “Peace and Security,” in which they make a good point on page 34, which you may want to elaborate on. They say:

Equally the crime syndicates and rings are increasingly operating through networks that extend across Canada and, indeed, beyond the country's borders.

I am assuming that that is definitely one thing that motivated the filling of this gap.

Mr. Landry: That was noted very shortly after the beginning of the second session of the organized crime inquiry in Quebec, in the tainted meat business, where they were getting into Ontario. They were very limited in what they could do about that aspect of the matter although the providers of some of the tainted meat were from Ontario and were shipping it into Quebec. There was nothing much that they could do with search warrants and that sort of thing in Ontario. I believe that this is one of the key points so far as the purpose of this legislation is concerned. The federal Parliament comes in and exercises its jurisdiction in creating the possibility of such crime inquiries with extra-provincial jurisdiction. The Supreme Court of Canada could decide that the provincial legislation is valid, but the province would be limited to its own territory in enacting legislation, and the provincial competence could fill the gap to reach extra-provincial places.

Senator Flynn: But that is not the only problem. The problem before the Supreme Court is somewhat different. It is not a question of extra-territorial competence.

Mr. Landry: No, no, it is basically whether or not section 19 deals with the investigation of crime, and, if it does, is it

competent for the province to legislate about such a matter. That is the only issue before the Supreme Court.

Section 775 gives the possible terms of reference of such a provincial inquiry, and that section limits the possibility of such inquiry to matters that are primarily offences in relation to which proceedings are ordinarily instituted by the provinces. This means that basically these commissions of inquiry would relate to Criminal Code offences, as opposed to Statutory offences other than Criminal Code—for instance, the Narcotic Control Act. The provinces would be limited to these inquiries within the field of the Criminal Code. Inquiries should relate primarily to such offences and not to offences under the Narcotic Control Act. This is the interpretation we would put on those words.

Senator Godfrey: I notice the words “organized crime” seem to be in favour in this section, although you cut them out in another section because you did not know what the expression meant. So you have cut them out in one section and you have included them in this. Now I am quoting you this morning.

Mr. Landry: Well, that would form part of the “whereas”, no doubt, in the order itself. It may be easier for the executive branch of the government to form an opinion on what “organized crime” may be than for the judicial branch or the judges, and for us to adduce evidence of such matters.

Senator Croll: Have you spoken to any judges about that lately?

Mr. Landry: I believe there are some telephone lines not operating anymore!

Senator Flynn: Again, I would say to Senator Croll that he should know what to say to a judge and what he should not say. It is very easy for me, but apparently it is very difficult for Senator Croll to understand this.

The deputy Chairman: Mr. Landry has not had the benefit of the able discourse between these two senators on that subject.

Mr. Landry: The other sections proposed are more or less, I would suggest, the mechanics of such a commission when created. It would have power to compel witnesses and power to issue search warrants. Where search warrants are concerned, the distinction from section 72 of the Criminal Code is that the documents may be retained until such time as the investigation is over, except that when the documents are kept for more than 90 days or three months, the commission must put its mind to the question and decide whether it is necessary to continue to retain them. There is power later for the superior court to look at the documents being held by the commission.

Senator Croll: Is there not a rule in the Income Tax Act that when documents are taken, the people taking them must either leave a copy or bring a copy back to the person from whom they were taken?

Mr. Landry: I don't believe the Income Tax Act has a provision of that nature. I know that under the Combines Investigation Act the practice is to do that. But it is not clear in my mind whether there is a section saying that it must be done.

Senator Croll: But the income tax people do it, so why don't we do it?

Mr. Landry: I believe that when documents are seized by the Special Investigation Branch of the Department of National Revenue, if the conduct of the business is going to be hampered by the seizure of the documents, then arrangements are made on an ad hoc basis to supply whatever documents may be useful and necessary to the taxpayer. I do not think there is any such requirement in law.

The Deputy Chairman: I can assure you from personal experience that there is no requirement, but the practice always is to do so on request.

Senator Flynn: The point was raised when we were looking at the so-called income tax reform bill in 1971. I do not know if we made an amendment or if something else was done, but I remember distinctly that the question was raised. Perhaps there was an amendment or something like that.

The Deputy Chairman: I don't think so.

Senator Flynn: Well, maybe not.

The Deputy Chairman: I remember it being raised, but I am quite positive that nothing was done.

Mr. Landry: The last provision, as you know, the possibility of the Quebec inquiry commission to find persons guilty of contempt, was subject to a certain amount of criticism. Some of the arguments, which are not mine, as I stand neutral, were that it may be or may look improper for a commission of this type to, right off the bench, tell a person, “You have not answered our questions in a satisfactory manner. We find you guilty of contempt and sentence you to one year in prison.” Some say there is the principle that not only must justice be done, but it must be seen to be done. So here, to eliminate such possible criticism, section 789 provides that the commissioners do not have the power to find a person guilty of contempt, but the matter must be brought before the Superior Court, which holds a hearing on the matter and makes a determination accordingly. So it will be another tribunal.

Senator Flynn: Wasn't the main problem before the Quebec commission as to whether if someone must give evidence it would involve the question of self-incrimination?

Mr. Landry: The matter of contempt at that commission arose in two ways: some persons did reply to questions in a manner which the commission found to be unsatisfactory and were found guilty of contempt for that; others refused to testify.

Senator Flynn: I am thinking of this last group.

Mr. Landry: This brings up the question of the right to silence of individuals. In Canada there is no right of silence for a witness, who must answer questions, except that his answers may not be used against him in evidence in a criminal trial, in particular as a result of section 5 of the Canada Evidence Act. All the witness has to do, technically speaking, is say, “I refuse to answer on the grounds it may incriminate me.” In the United States that would be the end of the matter. Here he must answer but, because of his objection and because he is bound to answer as a consequence of section 5 of the Canada Evidence Act, the answer cannot be used against him.

The right of silence is for an accused who is investigated by the police. No one is bound by law to answer the police. There is no obligation on any person, even a prospective

witness, when an accused is charged with an offence, our laws provide that there is a full right to silence. It is for the Crown to make its case; the accused is not bound to say anything and is entirely free to answer the charge. At that time the right of silence exists, but very often we have situations in which two persons who are charged with having committed a crime in separate charges are called upon by the Crown to testify against the accomplice. As a matter of fact, there is quite a body of jurisprudence which has been built up over the years as to the caution with which one must look at accomplices who testify. So the witness in Canada has no right of silence; he must answer. This applies before inquiry commissions, where the witness is called upon to answer. He is a witness, not the accused, and is bound to answer the question, but receives the protection of the Canada Evidence Act.

Senator Flynn: Yes, but that was the point made before the Supreme Court, where the appeals were on the ground that if they had to answer they would incriminate themselves and whether the provincial legislation could force them to testify in such cases. That is the problem before the Supreme Court.

Mr. Landry: Some persons may see that as being one of the questions, but if it is a question it is very incidental to the basic question which is before the Supreme Court. I believe that the debate centred basically around the question of the constitutional validity of section 19 and the Order in Council. I may say that it is so, because I argued it and was present throughout the proceedings.

Senator Godfrey: You mentioned that one of the convictions for contempt in the Quebec case was not just because of refusal to answer but because the answers were unsatisfactory.

Mr. Landry: There are three cases that I have in mind when I say that. There is that of Vincenzo Cotroni, which is one of unsatisfactory answer, as far as I remember. With respect to Di Iorio and Fontaine, I will not vouch as to whether it was a question of straight refusal or unsatisfactory answers.

Senator Croll: Were there convictions in the first case?

Mr. Landry: The two debated before the Supreme Court were those of Di Iorio and Fontaine, although Vincenzo Cotroni reached the Supreme Court at about the same time as we were arguing this case. The Cotroni case is in abeyance and has not been argued before the Supreme Court.

Senator Godfrey: This section you have put in does not cover the question of unsatisfactory answers; it is only refusal to testify.

Mr. Landry: Section 789 provides:

Where a person refuses to testify before a Commission or to comply with a subpoena issued by a Commission, a judge of the Superior Court . . .

So it is refusal to testify or to comply with a subpoena. Refusal to testify may be a fundamental refusal by saying, "I do not testify," or it could be a specific refusal to answer a specific question. As to the matter of how the court would interpret that, you could say if the person skates around the question and never replies to it—you may not know what I mean, but one can skate around an answer and never really answer the question. Whether that could be interpreted as a refusal to testify, I believe—although I

do not wish to express myself in an *ex cathedra* fashion—that there no doubt could be possibilities of argument as to what constitutes a refusal to testify.

Senator Croll: Is there any law with respect to similar cases?

Mr. Landry: At common law there are a number of cases dealing with contempt. The contempt can be simply contemptuous conduct in the manner in which the question is answered. Even though the answer is given, it could be contemptuous of the court and, of course, there is obviously no jurisprudence on this particular proposed statute.

Senator Croll: Or words to that effect. That seems to me to be strange, the point raised by Senator Godfrey being the strange portion. I know what contempt is, but even if I do not, it does not bother me. When you refer to an answer which is considered by the judge or the tribunal to be unsatisfactory, it is another matter entirely.

Mr. Froomkin: It may be a question of whether the section goes quite that far. At common law I believe that the law does go that far, sir. That is, if by your conduct, notwithstanding your answers, you appear contemptuous, you may be cited for contempt. The proposed section does not appear to go quite that far. It appears to restrict itself to failure to comply with a subpoena. That is, failure to come before the tribunal, or refusal to testify.

The Deputy Chairman: I have been waiting impatiently for Senator Flynn to raise the matter of contempt by gesture—you know, sticking out your tongue.

Mr. Froomkin: Or any other portion of your anatomy.

The Deputy Chairman: Yes, exactly.

Senator Flynn: I never do that.

The Deputy Chairman: No, but you argued about it at one time.

Senator Flynn: I know, but the idea is whether in fact you are refusing to testify, even if you agree to take the stand. If you do not answer the questions or avoid answering them, that is the equivalent of a refusal. That is the point.

Senator Godfrey: Or a faulty memory.

Senator Flynn: Not a faulty memory, but a well prepared memory.

Senator Godfrey: A selective memory.

Senator Flynn: Selective memory.

Mr. Froomkin: At the end of the day, of course, that would be for judicial interpretation, and one opinion is as good as another. It appears as if the section as drafted is relatively restricted to the two areas—that is, failing to comply with the subpoena and refusing to testify, as opposed to the manner of testifying, which would be contemplated by the ordinary common law rules of contempt.

The Deputy Chairman: What else have we got?

Mr. Landry: One additional point that I would like to mention is section 786(2), which creates an offence for one who would disclose evidence given before an *in camera* hearing of a commission. That comes from certain experiences which occurred during the time of the Quebec com-

mission when one was reading in *Le Devoir*, or some other newspaper, memoranda normally accessible only to the commissioner. There may on occasion be a police officer who may not be satisfied with the way the matter is being handled, and he takes it upon himself to ensure that the public is made aware of what he knows, forgetting about the overall objective pursued by the inquiry commission. Sometimes that could jeopardize other operations of which this person is unaware. This would dispose of that possibility by making in an offence.

Senator Flynn: Judge Robert Cliche, who presided over one of the commissions in Quebec, raised this very point, that a commission should not be used to publicize a number of things before a charge is definitely laid, that the accused would be prejudiced by divulging the evidence collected by the commission.

Mr. Landry: The way the commissioner of inquiry in Quebec proceeded when calling witnesses *in camera* was to more or less screen the evidence or determine what the witnesses were in a position to state. Very often a witness may be willing and ready to state certain things to the public in general which come from hearsay which has not been checked by anyone; and by proceeding *in camera* some of the allegations can be checked by the police on further investigation before the stories are allowed to get out to the general public. It is a measure of safety for the citizen in general.

Senator Croll: If they can disclose the information after they cease to exist . . .

Senator Flynn: You cannot.

Senator Croll: The damage could still be great.

Senator Neiman: They cannot do it.

Mr. Landry: The person would have to have the consent of the attorney general of the province.

Senator Neiman: The attorney general has to give consent.

The Deputy Chairman: That is the protection.

Senator Croll: At some time this is given in private. It no longer exists. It now says that the attorney general can give permission at that time. The damage is done. The man has not been convicted; he has merely had some more dirt thrown at him.

Mr. Landry: From the parliamentary system, I understand there is still a sanction. If it is found that the attorney general has improperly done it, he may have to answer certain questions—for a period of time, anyway.

Senator Godfrey: A newspaper can be prosecuted under this section. I think that in other cases the same principle should apply—for example, disclosure of confidential reports of committee that have not been tabled in the house.

The Deputy Chairman: Yes. That has been known to happen. Are there any further questions on this matter of special inquiries? This is the time to ask them before we proceed to the next topic.

Senator Neiman: I was wondering if it is usual to execute warrants or to have provision for the execution of warrants only by day. Is that common in all sections?

Mr. Landry: Yes. Under the Criminal Code the warrant would be endorsed so that one would be authorized to execute it by day. "Day" is defined somewhere. It is in the interpretation section.

The Deputy Chairman: It is in the interpretation section:

"day" means the period between six o'clock in the forenoon and nine o'clock in the afternoon of the same day.

Senator Flynn: You also have that in civil matters, for serving a writ of summons.

Mr. Landry: It is section 444 of the Code:

. . . shall be executed by day, unless the justice, by the warrant, authorizes execution of it by night.

So a justice, looking at a warrant, must exercise some discretion in determining when it is to be executed.

The Deputy Chairman: If there are no further questions on that particular topic, we shall proceed to deal with dangerous offenders. Who will deal with that?

Mr. Froomkin: I will, sir. Page 41 is where section 688 commences. It is the first of the proposed sections under "Dangerous Offenders." It may be appropriate if, in dealing with this, I give some background material. You are all aware that a number of reports in the past have been issued in respect of dangerous offenders, not the least of which is the Goldenberg report of this committee issued in March 1974. That report followed, amongst others, the so-called Ouimet report, which is the report of the Canadian Committee on Corrections which was published on March 31, 1969.

For background, if I might spend a few moments on what I call the Goldenberg report of this committee, I will deal with some of the problems that this committee recognized and the recommendations made by the committee, to see how they tie in with the proposed legislation, because, in fact, the major recommendations of this committee are reflected in the proposed legislation.

The problem that was indicated with respect to the then dangerous offenders—I am reading from the report at page 117—was as follows:

The legislation thus appears to be too broad in that application has resulted in the incarceration of a number of offenders who, although persistently criminal, may not be dangerous. At the same time, it is not broad enough because, as suggested in the Ouimet Report, it does not provide for indefinite incarceration of those who may be dangerous: . . .

The report continues:

The Committee accepts the opinion of the Ouimet Committee that persistent offenders can be dealt with by appropriate sentences provided by the *Criminal Code*. This means that preventive detention should be used exclusively for those considered to be serious threats to public safety.

Honourable senators will recall that under the existing legislation, if an individual were convicted in the past of at least three indictable offences and was leading a persistently criminal life, he became an habitual criminal and was subject to incarceration for an indeterminate period. As a result, a housebreaker with many convictions was

subject to this legislation, and although he was a real nuisance he was not a dangerous offender in the concept that was contemplated—that is, a danger to the safety and welfare of the citizens.

The report continues:

We accept the conclusion of the Ouimet Committee that this legislation is "capable of being applied against, and has in fact been applied against, sexual offenders who are not dangerous".

That dealt with the definition of a dangerous sexual offender.

It suggested that the basis upon which dangerous sexual offenders are defined is inadequate, and concluded that the dangerous sexual offender is "only one class of dangerous offender and the present legislation obscures this fact.

The committee then recommended as follows:

The present legislation on habitual criminals and dangerous sexual offenders should be repealed and replaced by dangerous offenders legislation which would set criteria for identification of dangerous offenders and a mechanism for the assessment of persons alleged to be dangerous.

I should pause at this point to say that that recommendation is in fact reflected in the proposed legislation, which would repeal the existing sections dealing with habitual criminals and dangerous sexual offenders and provide for one category of dangerous offenders.

On the question of criteria, the report states:

Dangerous offender legislation must be formulated to provide for incarceration of dangerous individuals but explicitly excluding persistent petty offenders who are not dangerous. Criteria for identifying dangerous offenders should not be based so much on the number of offences as on the type and circumstances of the offences and on the character of the offender.

Again, those observations are reflected in the proposed legislation. The committee went on to outline those matters which should be taken into account in respect of the category now to be known as dangerous offenders, as follows: the offence with which a person is charged; the circumstances surrounding the offence; the offence being part of a continuing dangerous criminal career or activity; the offender having a propensity towards violence.

The committee also set out, with respect to the mechanism for adjustment, the following matters, which committee members deemed to be appropriate, and they were, in fact, similar to the proposals set out in the Ouimet Report:

That dangerous legislation empower the court, when it is of the opinion that an offender may be dangerous, to remand him to a diagnostic institution for a maximum period of six months for assessment.

Should the offender be diagnosed dangerous, he will be given suitable notice that the issue will be decided by the court.

The offender will have the right to defend himself, and be provided with counsel if he is unable to obtain counsel himself.

If the diagnostic facility does not assess the offender as dangerous, or where the court does not find the offender dangerous, he will be dealt with like an ordinary offender.

If the court finds the offender is dangerous, he will be sentenced according to provisions of the dangerous offender legislation.

Such legislation should provide the offender with the right of appeal on any ground of law or fact.

Again, the proposed legislation takes all of these factors into account.

The committee recommended as follows with respect to the term of imprisonment:

This Committee believes that an indefinite sentence is appropriate for dangerous offenders.

Continuing:

An indefinite sentence thus provides the public with maximum protection through a long term of imprisonment during which careful study can be given to the offender's eventual release.

The Law Reform Commission, of course, has recently issued a report on the question of indeterminate sentences, and is opposed to them. It suggests that lengthy sentences be imposed rather than indeterminate sentences.

A criticism of that policy may be that where a dangerous offender is sentenced to a specific term of imprisonment, at the end of that term, whether he is still dangerous or not, he must be released, whereas in the case of an indeterminate sentence, the individual is released when, and only when, he is considered to be no longer dangerous.

This committee further recommended that dangerous offender legislation should provide for preventive detention for an indeterminate period, as now provided for dangerous sexual offenders and habitual criminals.

With that background, perhaps I might just deal in general terms with the proposed legislation, bearing in mind the foregoing recommendations and criticisms.

The object of this amendment is to repeal the dangerous sexual offender provision as contained in section 687, and the habitual criminal provision as contained in section 688, both of which give rise to an indeterminate sentence, and substitute therefor the concept of dangerous offender, who would also be subject to an indeterminate sentence.

The habitual offender provisions in the Code have been criticized on the ground that they were capable of being applied to persons who, although they were persistent criminals, were not dangerous offenders, the most obvious example, of course, being the chronic thief.

The dangerous sexual offender provision, while satisfactory as far as it went, dealt with only one type of dangerous offender. It is submitted that it is preferable to enact legislation which would encompass dangerous offenders generally. Neither provision was directed specifically to the person convicted of an indictable offence where personal violence or danger to the life or safety of another person was a factor.

The rationale for the proposed amendment is the increase in the number of violent crimes, particularly, robbery, rape and other sexual offences, wounding, attempted murder, and so on. The legislation, therefore, is directed towards individuals who commit (a) crimes involving personal violence or danger to the life or safety of another person, or that is likely to inflict severe psychological damage on another person, for which the offender may be imprisoned for 10 years or more; or (b) certain of

the sexual offences that could have qualified the offender as a dangerous sexual offender section 689 of the Criminal Code, namely, rape, attempted rape, sexual intercourse or attempted sexual intercourse with a female under 14, or between 14 and 16, indecent assault on a female or male, and gross indecency.

These crimes, in the proposed legislation, are described as serious personal injury offences. The legislation provides that where a person is convicted of a serious personal injury offence, within the meaning of that definition, that constitutes a threat to the life, safety, or physical or mental wellbeing of another person, the court may—and I emphasize “may” because it is discretionary—on application, find him to be a dangerous offender and impose an indeterminate sentence in lieu of any other sentence that may be imposed.

The criteria for finding that such a serious personal injury offence constitutes a threat to the life, safety or wellbeing of another person are, firstly, a pattern of repetitive behaviour showing a failure to restrain his behaviour and a likelihood of causing death or injury to other persons, or inflicting severe, psychological damage upon other persons; secondly, a pattern of persistent, aggressive behaviour showing indifference as to the reasonably foreseeable consequences of that behaviour; or, thirdly, behaviour that is of such a brutal nature as to compel a conclusion that he is unlikely to be inhibited by normal standards of behavioural restraints with which the offence is associated or forms a part—that is, the offence for which he has been convicted.

In the case of a serious personal injury offence as described in subsection (b)—that is, the sexual offences—the court may impose an indeterminate sentence where the offender, by his conduct, including that involved in the commission of the offence for which he was convicted, has shown a failure to control his sexual impulses and a likelihood that he will cause injury, pain or other evil to other persons through failure, in the future, to control his sexual impulses. A person so sentenced shall have his case reviewed by the National Parole Board within three years, and thereafter not later than every two years, for the purpose of determining whether he should be granted parole, and if so on what conditions. The theory of the indeterminate sentence in this case is that person is simply too dangerous to be sentenced to a fixed term, after which he is required to be released, and his eventual release is made subject to assessment by the National Parole Board.

Under the law as it now stands, a person may be found to be a habitual criminal and liable to an indeterminate sentence if it is expedient for the protection of the public to so sentence him, where he has, since reaching the age of 18 years, on at least three separate and individual occasions been convicted of an indictable offence for which he was liable to imprisonment for five years or more, and is leading persistently a criminal life, or has been previously sentenced to preventive detention. As was mentioned earlier, this provision has been criticized as being applicable to the nuisance type of criminal rather than the violent one who is a serious threat to society. For example, there is a gentleman now serving a second term for a homicide in the Northwest Territories. The first time he shot a mounted police officer and killed him, and was sentenced to five years. A few years later he was sentenced for a second murder and is now doing ten years.

Senator Hastings: Was he sentenced to ten years for murder?

Mr. Froomkin: Manslaughter in both cases. The first case was the famous Sea Island murder, which you may have read about. Under the present legislation, if he had not been convicted of at least three separate indictable offences, even though he is known to be a violent individual when he has been drinking, and homicidal when he has been drinking, he could not be sentenced to preventive detention, whereas the pretty criminal who breaks into houses consistently can in fact be caught within the provisions of the existing legislation.

Senator Hastings: This would not apply to him or anyone else in custody at the present time?

Mr. Froomkin: No. When he gets out, of course, if he gets into another unfortunate circumstance it will apply to him.

The Report of the Canadian Committee on Corrections, the Ouimet Report, at page 252 said:

The Committee concludes that while the present habitual offender legislation has been applied to protect the public from some dangerous offenders, it has also been applied to a substantial number of persistent offenders who may, perhaps, constitute a grave social nuisance but who do not constitute a serious threat to personal safety.

Under the present law a person may upon application to the court be declared a dangerous sexual offender and liable to an indeterminate sentence where he has been convicted of rape, sexual intercourse with a female under 14 or between 14 or 16, indecent assault on a female, buggery or bestiality, indecent assault on a male or an act of gross indecency. “Dangerous sexual offender” is defined as a person who by his conduct in any sexual matter has shown a failure to control his sexual impulses, and who is likely to cause injury, pain or other evil to any person through failure in the future to control his sexual impulse.

The Ouimet Report, at page 256, expressed the view that dangerous sexual offenders constitute only one type of dangerous offender, and that it would be preferable to enact legislation to encompass all dangerous offenders. Both that report and the report of this honourable committee recommended dangerous offender legislation with indeterminate sentences to replace the present habitual criminal and dangerous sexual offender legislation.

Under the existing legislation, a person in custody under a sentence of preventive detention shall have his case reviewed at least once every year by the National Parole Board to determine whether he should be granted parole under the Parole Act, and if so on what conditions. This provision will continue for persons already under preventive detention.

Under the new legislation, the review comes in the first instance within the first three years, and subsequently not later than every two years thereafter. It is believed that since release after one year is, in most cases, unrealistic, it is unfair to create expectations in the inmate that he may actually be released that early. The Hugessen Report made that point at page 32, and indeed recommended that the eligibility date be set at four years.

Under the present law, on the hearing of an application that a person be declared a dangerous sexual offender the court shall hear evidence of at least two psychiatrists. Under the proposed legislation, in addition to the psychiatrists, one nominated by the prosecution and one by the defence, the court shall hear all other relevant evidence,

including the evidence of any psychologist or criminologist called by the defence or the prosecution. The total number of experts would still be limited to five on each side, unless enlarged with leave of the judge under section 7 of the Canada Evidence Act.

The procedures by which under the new legislation a person may be declared a dangerous offender do not differ significantly from the law as it now stands with respect to the dangerous sexual offender, except that in the case of the dangerous sexual offender, once he has been so found, the court was obliged to impose a sentence of indeterminate length. That is, under the existing legislation, once the court found that the offender was a dangerous sexual offender the court was obliged to impose an indeterminate sentence. Under the proposed legislation that is discretionary. Under the habitual criminal provision as it now exists and under the new dangerous offender provision, the court has discretion as to whether or not it will impose an indeterminate period in a penitentiary.

Senator Hastings: What would it impose if it has discretion?

Mr. Froomkin: Rather than impose preventive detention it would sentence him for the substantive offence.

Senator Hastings: So that he is not a dangerous offender.

Mr. Froomkin: The court could find that in fact he is a dangerous offender, but because of the evidence submitted to the court it would not be in the interests of the community and/or the individual that he be sentenced to preventive detention.

Senator Neiman: Give us an example.

Senator Godfrey: Give him ten years instead.

Mr. Froomkin: Yes, give him ten, twenty, thirty or fifty years instead. For example, take an individual who has an incurable disease, he is dying of cancer, but he is a dangerous sexual offender. If he has only five years to live, rather than sentence him to an indeterminate sentence the court may say it will sentence him to four years; the last year he is going to be in hospital in any event, incarcerated or under hospitalization. There are circumstances where the court may find that it is not in the interests of the community of the offender that a sentence of preventive detention be imposed.

Senator Flynn: Do you have to make the application separately from the substantive charge?

Mr. Froomkin: Yes. The application comes only after the conviction for the substantive offence, and then notice must be served.

Senator Flynn: At the time of sentence?

Mr. Froomkin: No, the application is made before sentence.

Senator Flynn: That is what I mean, after conviction.

Mr. Froomkin: After conviction and before sentence, and notice must be served advising the convicted person that an application will be made, and the grounds of the application.

Senator Flynn: Can you make an application even if there has already been conviction and sentence?

Mr. Froomkin: The legislation does not contemplate that.

Senator Flynn: Suppose you have someone who is presently in jail and you know he is a dangerous offender, can you make an application at this time?

Mr. Froomkin: Under the present legislation, yes.

Senator Flynn: As soon as the new legislation comes into force?

Mr. Froomkin: I am sorry, I have missed it. Under the existing legislation you can do that. Under the proposed legislation, I would say no, it is not retroactive to somebody who has in fact been convicted of an indictable offence and been sentenced.

Senator Flynn: Suppose he has been. Suppose there is a conviction after the coming into force of this legislation, and after the sentence to a definite term for the substantive offence you find when he is in jail that he should be considered a dangerous offender, can you make an application without a new crime being committed, for which there would be a conviction?

Mr. Froomkin: I would say no, sir.

Senator Neiman: Does that not create an anomaly? It seems inconsistent. I realize the problems with retroactivity, on the one hand.

Mr. Froomkin: I assume that the honourable senator's suggestion is that one ascertains, after the man has been sentenced, that he is a dangerous offender, and that would only arise if the man committed an offence in prison.

Senator Neiman: Not necessarily, not according to your definition.

Senator Flynn: Maybe the crown attorney did not know of his record, and finds out after he has been in jail for some time.

Senator Hastings: I am thinking of a case of a man convicted of a breaking and entry, and by virtue of his conduct in custody it is obvious to those in charge of this man that he is a dangerous man. However, he is only serving four years for breaking and entering, and we then have to let him out. If some facts come to light, there are no provisions to apply to the court to keep the man in.

Mr. Froomkin: Section 688 clearly indicates that that cannot arise. Section 688 says:

Where, upon an application made under this Part, following the conviction of a person for an offence, but before the offender is sentenced therefor.

The Deputy Chairman: Those are the key words.

Senator Hastings: We recommended in our report that conduct in custody be considered.

Senator Godfrey: There would be cases where a man may be sentenced to 20 years, and he could get out on parole in three years . . .

Senator Hastings: Seven years.

Senator Godfrey: It seems to be illogical that in a case where a judge wants to sentence a man to 20 years, and he finds he is a dangerous offender, he is really only sentencing him to a possibility of three years.

Mr. Froomkin: If one looks at the rationale behind the legislation, which is to protect society from people who are truly dangerous, then we do not want to keep them incarcerated if they are no longer dangerous. If at the end of six months they are no longer dangerous, then by all means we should release them.

Senator Flynn: But if after six months you believe they are, and you have not made an application, I think you should be able to make your application then.

Senator Godfrey: If this section had not been in at all—for exemplary reasons, as an example, or whatever—he would sentence him to 20 years and he could get out in seven. He is better off to be convicted as a dangerous habitual offender.

Mr. Froomkin: It may be that that is a circumstance that the court may want to take into account, when refusing to find a man to be a dangerous offender, rather than sentencing him to preventive detention, and impose a sentence of 25 years. That may be a circumstance. One cannot read judges' minds, and one must not read judges' minds.

Senator Flynn: The concept of the habitual offender was that at any time you could make an application to have the person declared an habitual offender. Here you are changing the nature of the offender, by substituting the concept of dangerous offender. You are changing also the method, because you limit the application of these provisions to the time following the conviction, but before the offender is sentenced. I do not see why you are doing away with the concept that a person may be found to be an habitual offender at any time.

Mr. Froomkin: I am satisfied that that is a policy decision, but I understand your point and it is certainly an interesting one.

Senator Godfrey: What would be the argument against being allowed to find him guilty and to fix sentence, plus being indeterminate because he is a dangerous offender?

Senator Hastings: I think it is accepted, if you are a dangerous offender you are doing ten years.

Senator Godfrey: Even though it says he gets out in three.

Mr. Froomkin: If he is no longer dangerous. The concept is to treat him as a dangerous person and say to him, "When you are no longer dangerous, you will be released," rather than saying, "We are going to punish you for your crime," and notwithstanding how dangerous he may be, release the offender even though he may be dangerous.

Senator Godfrey: I want it added on, the indeterminate. Why can you not sentence him for the crime and as well find him guilty of both offences?

Mr. Froomkin: I can only answer from a practical viewpoint and say that I am not aware of any circumstances under the existing legislation where individuals were found, after they were incarcerated, to be dangerous offenders. I may be wrong.

Senator Flynn: You mean, habitual offenders.

Mr. Froomkin: After they have been convicted for a subsequent offence, and where they have been found, in custody, to be an habitual offender.

Senator Flynn: It is not in custody. What has been the experience under the present legislation is that at any time, whether in custody or not, they may just make an application to have him declared an habitual offender.

Mr. Froomkin: Senator Flynn, that is so, but from the experience I have and the reading I have done, it appears to me that those applications have always been made at the time or immediately after the conviction; not some time later.

Senator Flynn: After the offence; I do not know why you do away with this principle.

Mr. Froomkin: What I am suggesting is that the hypothetical example given, although it can arise, is so rare as not to be a practical concern. If an individual is dangerous and demonstrably dangerous—that is, so you can prove he is in fact dangerous within jurisprudence—you will know that when he is convicted of a subsequent offence.

Senator Flynn: Not necessarily.

Mr. Froomkin: I agree "not necessarily"; but from a practical standpoint that is so. I am not aware of any cases where an individual was sentenced to a term of imprisonment and some time long after was found, while he is in custody, to be dangerous.

Senator McIlraith: I want to get the rationale behind preventing the authorities from making an application to have an inmate, who has been convicted and is now in jail, declared a dangerous offender.

What causes me to ask the question is this. Take an inmate who has been convicted of a murder, and subsequent to his conviction—I believe I am right in this, but I would like to refresh my memory on the point—admits to two earlier murders committed over a period of the last six years, and he even gives details of the pattern of the murders and the reason why he used different methods—in one case by using an axe, another by shooting, and another one by choking—what is the rationale against permitting an application to be made now to have that person declared a dangerous offender?

Senator Hastings: I would say the individual is serving life now, so what have you got to gain?

Senator McIlraith: I want to get the rationale.

Senator Hastings: He could be released, as a dangerous offender.

Senator McIlraith: I just want to clear up this point first. He can be released as a convicted murderer on the ordinary criteria of the Parole Board, after the lapse of so many years. Under the dangerous offender provisions, if I understand them correctly, the Parole Board is obliged to leave him there. There is a slightly different approach to the basis of granting the parole.

Mr. Froomkin: Unless the individual has been convicted, within the period of time as laid out in the section, of two other indictable offences...

Senator McIlraith: Only one conviction.

Mr. Froomkin: I am sorry, the proposed legislation does not include murder; it excludes murder and high treason. The legislation does not contemplate the offence of murder because it is dealt with in a different way under the proposed legislation, Bill C-84.

Senator Flynn: I still do not think you have given a satisfactory answer to the point raised by Senator McIlraith. Let us forget about murder. To obtain a conviction as a dangerous offender you have to prove an offence, and one has been proved in this case, although it is not murder. Let us suppose it is something else. You have to establish a pattern of repetitive behaviour by the offender; it does not necessarily mean another crime.

Mr. Froomkin: That is right, sir.

Senator Flynn: So if you find that out after the sentence you cannot then make an application separately and accomplish it by proving a pattern of repetitive behaviour. That is provided in section 688(1), et cetera. It seems to me that you are doing away with an important concept. If you want to protect society, and you find that a man is a dangerous offender after he has been convicted and sentenced for one crime, you should be able to use these provisions if you come into possession of evidence which would show that he is a dangerous offender, and should not be released until an appropriate length of time has gone by.

Senator McIlraith: That is my point.

Mr. Froomkin: That is certainly an area that the legislation does not contemplate. The only rationale I can offer is that from a practical standpoint it has not been found necessary to deal with that hypothetical case.

Senator Flynn: When will you find it necessary?

The Deputy Chairman: Well, we have that option in this committee. We may very well find that this will be one of our recommendations.

Senator Hastings: I know of a case similar to the one mentioned by Senator McIlraith where a young man was convicted of breaking and entering; but the circumstances of the breaking and entering were that he broke in and hit a man over the head and left a torch going at his face. Murder, however, did not take place, and all he could be convicted of was breaking and entering. He is now doing four years for that offence. This man's psychotic make-up, however, is such that he should not be released.

Mr. Froomkin: And the proposed legislation contemplates that very kind of individual.

Senator Hastings: This is what we have now.

Mr. Froomkin: Yes.

Senator Hastings: Do you have any statistics on the average sentence for dangerous sexual offenders?

Mr. Froomkin: There are statistics. I hope I can find them. The average time spent in custody under sentence of preventive detention until release on first parole for habitual criminals is five years nine months, and for dangerous sexual offenders nine years five months.

Senator Hastings: Which brings me to my point. Are you not making the same mistake as you did under the old act in reviewing these sentences after three years, when it is obvious that these men are going to be serving much more than that?

Mr. Froomkin: Except that of course this is an average. Some may be serving 20 years, and some may be serving two. In order to ensure that the incarcerated individual is being dealt with in a responsible and reasonable fashion it

is proposed that the first assessment of his case take place after three years so that, first of all, he is not without hope, while on the other hand you avoid reviewing his sentence every year, thus giving him hope that is beyond any reasonable expectation. So three years was chosen, I believe, as being a reasonable period of time—thereafter it is every two years—during which time the National Parole Board, with their facilities, can investigate in order to ascertain whether in fact the man is fit to be released. The alternative is to average the five years nine months and the nine years five months and come up with something like seven and a half years, which I do not think any legislator would like to put in writing. It becomes just an intolerable thing for the person that you are putting away for that length of time, because obviously, this is a very severe form of legislation in that you are saying to somebody, "You are a danger to society. You have to be removed from society permanently, perhaps, or at least until such time as you are no longer a danger". I think to talk about not looking at him again for seven and a half years would really be quite intolerable for everyone.

Senator Flynn: There is a contradiction here, because it would seem to me that a man would have more hope of early review if he were declared a dangerous offender. If you were to give such a man a sentence of ten years as an ordinary offender, let us say, he would not be released before five years, as I understand it; whereas if he is declared a dangerous offender his sentence will be reviewed after three years. That seems to me to be illogical.

Mr. Froomkin: It is not a question of reviewing the sentence in order to ask him if he has been rehabilitated.

Senator Flynn: All right. Let us say he is being reviewed because the board thinks he can now be released because he is no longer a dangerous offender. If, at the time of his conviction, he had not been so declared he would have been sentenced to ten years and not released before a lapse of five years, so you are really giving him a chance under this legislation that he would not have otherwise. In other words, it would be better to be a dangerous offender than a simple offender.

Mr. Froomkin: I think what the legislation is saying is that once the individual is able to demonstrate, or once it is demonstrated on his behalf, that he is no longer dangerous, there is no longer any reason for . . .

Senator Flynn: But it should be the same for the simple offender.

Mr. Froomkin: Of course, that is another problem. That is a problem with regard to parole generally.

Senator Flynn: There should be some link between the two situations. I do not see how you can give the dangerous offender a better chance by declaring him to be a dangerous offender than he would have as a simple offender.

Senator Hastings: By including that three-year clause are you not doing exactly what Mr. Justice Hugessen said you had done, namely, you are building up hope of release after three years, when we know that no one is going to get out of prison after three years.

Mr. Froomkin: I am not sure that that is so. There are statistics right here, but I do not want to get into that.

Senator Hastings: You said before that a habitual offender got out in three years.

Mr. Froomkin: On that point, whether you prescribe one year, or two years, or three years or ten, you have to pick a number, and whatever the number is there are going to be arguments either way. I believe the Hugessen report recommended four years. The government proposes three years. Existing legislation says one year. Whether any of these numbers is correct or not is really something that I cannot argue about. The length of time is really a policy decision.

Senator Flynn: But if the man was sentenced to ten years as a dangerous offender, I think the period of review should be extended to the minimum period he would serve as a simple offender, otherwise it is not logical.

Mr. Froomkin: Another factor that just came to my mind, that I hope may be relevant, is that if someone is found to be a dangerous offender, there must be evidence from at least two psychiatrists, and therefore one has to contemplate the possibility that the person who is committing these offences is a sick person, as opposed to an ordinary criminal in the sense of someone doing it for money.

Senator Flynn: No, no. Now, just wait.

Mr. Froomkin: I think we have to bear in mind, with regard to the kind of people it is proposed to deal with under this legislation—namely, those who pose a threat to the community by reason of violence or threats—that you have to call the evidence of psychiatrists, of criminologists, of psychologists, and so on, on the basis of which you are going to put them away until they are better, and this presupposes that they were sick in the first place.

Senator Flynn: But you are giving them the same chance as a simple offender.

Senator Godfrey: What it means is that if you are really mean and nasty you get three years, but if you are only fairly mean and nasty you get five.

Senator Neiman: That brings us to the point that is really concerning me, to get on a slightly different tack for a moment. You are talking about the procedure we are going to go through to determine who these very dangerous people are, and we all agree that we are giving them, as you said, an unusual type of sentence—an indeterminate sentence. If I am reading this clause correctly, the first review for purposes of parole comes up in three years, and after three years we leave it to the Parole Board to decide whether these people are no longer dangerous. I do not think any of them are going to get out in three years, but it seems to me that if a person is as dangerous as all that, and we needed the testimony of psychiatrists, criminologists and everyone else to have them declared dangerous offenders, we need detailed and professional evidence on their application for release, rather than relying merely on the opinion of the Parole Board at that time. It does not make sense, to my mind, that they could be released to the public just on the decision of the Parole Board. Presumably they have been put away because they are extremely dangerous. Therefore, it seems to me that before they could possibly be considered for release they would have to go through that same psychiatric and psychological assessment as took place when the original disposition was made.

Mr. Froomkin: I assume that the reason for bills coming before committees such as this is to seek recommendations from the committee. That may be the kind of recommenda-

tion that this honourable committee may wish to make to the government.

Senator Flynn: And should be. There should be some correspondence between at least this and the operation of the Parole Board in another case, a simple case. It has to coincide, at least.

The Deputy Chairman: That is why the Minister of Justice said he would like us to consider this in advance, so this is a point on which we should make a recommendation.

Mr. Landry: May I say that you are comparing a 10-year sentence, but the problem arises if you compare it with a 20, 25 or 30-year sentence. Where would you draw the line?

Senator Flynn: I do not draw the line.

Senator Hastings: A person convicted of rape would be better off as a dangerous offender than taking 10 years.

Mr. Froomkin: There would not be an election, of course, on the part of the accused. However, the question is how often rapists get sentenced to 20 or 25 years. Your example—of an apparently dangerous offender who broke and entered premises and treated the inhabitants not very nicely and who is serving four years—is, perhaps, indicative of the types of problems faced every day in the courts by prosecutors who are dealing with dangerous people.

Senator Bell: Isn't these provision to sentence to life for break and enter?

Mr. Froomkin: Yes, if it is into a dwelling house. If it is breaking into a dwelling house at night, the maximum is life.

Senator Hastings: The circumstances now are such as to indicate that this young man is a very dangerous person.

Mr. Froomkin: I have some further statistics here. For those convicted between 1948 and December 31, 1973, 74 per cent of the habituals and 37 per cent of the dangerous sexual offenders have been released on parole to December 31, 1975.

Senator Flynn: I do not mind that, releasing them when we are sure that they are no longer dangerous. However, this should apply also to all the others.

Senator Hastings: How many of them had to have their parole revoked?

Mr. Froomkin: I am sure that the statistics are here somewhere. It would take some time to sort through to find them. That may be information which, if the committee is interested, I could obtain for you.

The Deputy Chairman: We would be interested.

Senator Godfrey: You mentioned earlier that the Law Reform Commission had recommended against indeterminate sentences.

Mr. Froomkin: Yes.

Senator Godfrey: Did they apply their minds to the question of habitual offenders also?

Mr. Froomkin: Yes.

Senator Godfrey: What was the argument against it?

Mr. Froomkin: I will read from the report of the Law Reform Commission, working paper on imprisonment and release, 975, page 29, on dangerous sexual offenders:

Another attempt to deal with exceptional cases was the enactment in 1948 of special laws for the detention of persons found to be dangerous sexual offenders. Experience with this type of law in Canada and elsewhere, however, has been one of general failure. Growing experience and research shows the difficulty of making reliable findings about dangerousness. Faced with this unreliability the indeterminate life sentence now provided for this class of offender is open to criticism. Progress in developing treatment has been disappointing as well. In addition, the law appears to be unevenly applied across the country and has been criticized for its lack of fairness and sufficient safeguards by the Canadian Committee on Corrections and others.

As already mentioned, it is difficult to describe with accuracy the class of persons that should be designated as dangerous sexual offenders. Vague and imprecise laws spread their net too widely. As a result persons are brought within their provisions who probably should not be. Another vital criticism is that we now realize how very badly we make judgements about dangerousness. Not even psychiatrists are of real help here. We do not know how to predict dangerousness or degrees of dangerousness with accuracy.

The problem is compounded by the difficulty of predicting how a man will behave on the street by assessing his performance behind bars. It cannot be done at all effectively. The best way of assessing risk is to make observations under conditions of controlled release. This is consistent with the finding that the best predictor of future behaviour is past behaviour. Nor can the special sentencing laws for dangerous sexual offenders be depended upon any longer, as they were at one time, on the ground that long-term medical treatment would reduce or eliminate dangerousness. It is an illusion. We know very little about changing human nature even under the best of conditions.

Serious offences, including sexual offences, should be dealt with under the ordinary sentencing law. If the offence warrants a sentence of imprisonment for purposes of separation, this offers the possibility of a long period of custody and release under controlled supervision where needed. Experience seems to show that with maturity and age offenders are less likely to commit further crimes of violence. In view of the limits of rehabilitation, the costs of over-prediction, and the general principles enunciated earlier, a possible sentence of up to twenty years in cases of serious violence against persons should be adequate to deal with offenders who are thought to be a continuing risk to the personal security of others.

The Ouimet report and the Goldenberg report both disagreed with that and recommended that there in fact be indeterminate sentences for dangerous offenders.

Senator Flynn: I like the idea of changing the concept of habitual criminals to dangerous offenders. You seem to be creating a separate offence and only one offence in relation to the dangerous offenders, forgetting the rest, forgetting the simple offenders. Therefore you are dealing with them, I would say, in a special manner, but treating them better in one way than the simple offenders, because you tie the

indeterminate sentence reviewable after three years to the conviction which is arrived at on the basis of one simple crime, but with the added evidence that he may have a pattern of repetitive behaviour. You have to relate that, and I like the idea that we had before, or that we have in the present legislation, of adding these provisions to the others.

The Deputy Chairman: Of course, review does not mean release.

Senator Flynn: No, but it gives a pattern to the application of these sentences.

Senator McIlraith: It gives an opportunity of release at stated intervals, which is not open to persons who are sentenced to an indefinite period. That is the point.

Mr. Froomkin: That is correct, sir, but the discussion is based on a factor which I do not think is necessarily realistic—that is, that persons who are committing serious offences are getting long prison terms.

Senator Godfrey: That is true, but if the judge wishes to give a long definite prison term for the reasons given by the Law Reform Commission and decides to sentence a person to 20 years, he should be permitted to do so. Also, additionally to the 10 years which is ordinarily given, convict him as a dangerous habitual offender. Then he would be subject after the 10 years to a further period.

The Deputy Chairman: To the indeterminate portion.

Senator Godfrey: Yes, because he does not know what he will be like at the end of the 10 years.

Senator Neiman: But would you not make that on the basis of psychological and psychiatric evidence?

Senator Godfrey: That is right, but why can the two offences not be linked?

Senator Flynn: Or at least give the same treatment to the others.

Senator Hastings: I did not think there would be both sentences. The indeterminate takes the place of the sentence for the offence.

Mr. Froomkin: Yes, sir, except that under the existing legislation there is an option for the court. I am reading from section 688(1) under "Habitual Criminals," as follows:

Where an accused has been convicted of an indictable offence the court may, upon application, impose a sentence of preventive detention in lieu of any other sentence that might be imposed for the offence for which he was convicted or that was imposed for such offence, or in addition to any sentence that was imposed for such offence if the sentence has expired, . . .

The section continues.

Senator Godfrey: Mr. du Plessis pointed out to me that we could recommend an addition to section 688. Where it states:

. . . in lieu of any other sentence that might be imposed . . .

we could simply say:

. . . in lieu of or in addition to any other sentence that might be imposed . . .

That, I think, would take care of what we are talking about.

The Deputy Chairman: What do you think of that, Senator Flynn?

Senator Flynn: It seems to me we are going in one direction. I do not mind reviewing sentences after three years, but I want to treat everyone equally.

Senator Godfrey: I guess we have thrashed that one to death.

Senator Flynn: I suppose so, yes.

Mr. Froomkin: It has been said that the Senate can do anything.

Senator Godfrey: We do not have to decide this afternoon.

The Deputy Chairman: This is worth while considering. I assure you, Mr. Froomkin, that we will give it further consideration.

Mr. Froomkin: Under the new "dangerous offender" provision, the consent of the attorney general is necessary before an application can be made, while under the old "dangerous sexual offender" provision, no consent was necessary. The court to which an application is made to have a person declared a dangerous offender may also remand the convicted person for observation, which is recommended by this committee, where there is reason to believe that this might produce evidence relevant to the application, on the same basis as a justice may remand an individual for observation under section 465 of the Code; that is, for a period of up to 30 days, or up to 60 days, if supported by the evidence of a duly qualified medical practitioner. This provision does not now exist in respect of the dangerous sexual offender or the habitual criminal.

That completes my general remarks aimed at assisting the committee in thinking about the proposed legislation. Obviously, they have evoked a fair number of comments and recommendations. If there are any other questions or problems which honourable senators would like to raise, I should be glad to try to deal with them.

The Deputy Chairman: You indicated at the beginning of your remarks that a lot of the suggestions contained in the Goldenberg report now appear in legislative form. Were there any of our recommendations which were omitted?

Mr. Froomkin: I thought I put that so diplomatically that it would sneak by you. There were some recommendations that were omitted, Mr. Chairman. One of the recommendations which was omitted appears at page 119 of the report, and reads as follows:

Our Committee accepts the definition of individuals involved in organized crime set out in the *Model Sentencing Act*, and we agree that such individuals should be considered dangerous offenders.

One would not be considered a dangerous offender under the proposed legislation simply by virtue of the fact that he was a member of organized crime, unless he fell within the category of the criteria set out in respect of dangerous offenders.

Also, the committee recommended that the remand to a diagnostic institution be for a maximum period of six

months for assessment. The proposed legislation has, as the maximum period of time of such a remand, 60 days.

Another important recommendation of the Goldenberg committee which is not taken into account in the proposed legislation is recommendation 73, which reads as follows:

73. Dangerous offenders should be required to serve a minimum of ten years before being eligible for discretionary parole.

If I may offer a comment on that, if that recommendation were accepted and incorporated into the legislation—that is, a minimum parole period for dangerous offenders—it would mean that someone who is no longer considered dangerous would be kept in custody for a purpose which is no longer in existence.

It may be that the authorities would want to keep him in for another purpose—because he is a criminal—but he is no longer being held because he is a dangerous offender.

Senator Godfrey: The Law Reform Commission pointed out that you cannot tell whether a person is dangerous or not.

Mr. Froomkin: That was the opinion of The Law Reform Commission.

Senator Godfrey: If you are as old as I am, you will remember Red Ryan.

Mr. Froomkin: I will never forget him.

Senator Godfrey: R. B. Bennett let him out because he had reformed supposedly, and was no longer dangerous, and he turned around and killed a couple of people in a liquor store in Sarnia.

Senator Hastings: We have the odd failure.

Senator Flynn: I think consideration should be given to whether or not we should provide for the application to be made not only prior to sentencing but also at any time during the course of the sentence, based on the behaviour of the accused as it may be observed in jail, or elsewhere, and the other idea which was suggested by Senator Godfrey, that when the sentence is rendered it be an indeterminate sentence on top of a minimum sentence.

The Deputy Chairman: Those are two excellent points.

Senator Hastings: What assurance do we have that we are not going to fail in respect of those who are not dangerous, as we did under the previous act?

Mr. Froomkin: The legislation is so drafted that you should not be confronted with the same problem as previously; that is, the habitual criminal concept of someone who just keeps breaking into places. That individual will not come within the scope of this proposed legislation. The only individuals who will come within the scope of the proposed legislation will be the truly dangerous individual, the truly dangerous sexual offender.

The Deputy Chairman: A kleptomaniac, for example, would not come within the scope of the proposed legislation.

Mr. Froomkin: No.

Senator Neiman: Mr. Chairman, I have some reservations with regard to the interpretation section, specifically with regard to what is included in the definition of a serious personal injury offence, as set out at the top of

page 41 of the bill. I see that it will not include murder, and it occurs to me that perhaps some of the people we have been talking about, such as those who have been involved in some kind of organized crime—for example, those who murder for pay and are convicted—should come within this definition. Mind you, I do not know of anyone who has been convicted of that kind of offence in Canada, but certainly some of the murders that have been committed in Montreal have been of the type where someone is hired to wipe out a rival, and it seems to me that type of person, if convicted, should be deemed to be a dangerous offender.

Mr. Froomkin: I think the reason that murder, high treason and treason are excluded is because the proposed legislation dealing with those offences, some of which are capital offences, is such that they will be caught, and there will be no parole for 25 years or 15 years, as the case may be, subject to certain computations and permutations.

The Deputy Chairman: And there is no prescriptive period? The filing of the charge cannot be outlawed in respect of such crimes?

Mr. Froomkin: There is no limitation period in respect of such crimes.

Senator Flynn: What constitutes first degree murder and second degree murder under the present law?

Mr. Froomkin: Under the present law, senator, there is no concept of first and second degree murder.

Senator Flynn: You are adjusting for future legislation?

Mr. Froomkin: We are being, I hope, pragmatic.

Senator Flynn: But this will not mean anything until Bill C-84 is passed.

Mr. Froomkin: That is right, senator. If the other bill is not passed, this may have some consequence upon the interpretation section, which would have to be taken into account in due course.

Senator Flynn: Are you saying there would be no problem of interpretation if this legislation is enacted before Bill C-84? If that happens, we will have to refer to the law as it did exist in order to interpret it.

Mr. Froomkin: Senator Flynn, that may be a question that you might properly put to my honourable minister.

The Deputy Chairman: I think that is the right answer.

Senator Neiman: The other point in that section, Mr. Chairman, under subsection (b), I would question whether some of the offences should perhaps be there,

(sexual intercourse with a female under fourteen or between fourteen and sixteen), . . .

and perhaps some of these for indecent assault. I do not know that in many cases those should necessarily be classed in that section.

I can see that you might catch some offenders who are guilty of those acts provided they conform to subsection (ii) of (a) where they have inflicted severe psychological damage upon another person.

Mr. Froomkin: The serious personal injury offence only comes into play when you are relating it to the next part, the dangerous offenders legislation. That is, once one is convicted of one of the sexual offences that is indicated, then if there is reason to believe that they are a dangerous offender, because they fall into the criteria set out, you have reason to proceed. Otherwise, if it is an ordinary indecent assault, where a gentleman pinches a lady when she does not want to be pinched, I would assume that one would not contemplate him being a dangerous offender.

The Deputy Chairman: In that case everybody in Italy would be in jail!

The time is fast approaching when I had suggested we might adjourn. Are there any other questions?

We will now adjourn until 10.30 Tuesday morning, a week from today.

Mr. Froomkin: I believe our input is now complete to this point, unless you wish to have us back. The other provisions deal primarily with the Parole Act, the Penitentiary Act and the Prisons and Reformatories Act, and there will be people here, from the Department of the Solicitor General and Department of Justice, who are familiar with those provisions and will be able to assist the committee.

The Deputy Chairman: Thank you, gentlemen, very much. We understand the situation: we know that you have specialists on parole, and so on, available. We are grateful to both of you.

Senator Hastings: What will we be discussing next Tuesday at 10.30 a.m.?

The Deputy Chairman: I would suggest that we deal with the Parole Act next Tuesday at 10.30 a.m.

The committee adjourned.

CA 178 24
- 32



Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 38

TUESDAY, MARCH 30, 1976

Third Proceedings on:

“The Subject matter of Bill C-83 intituled:
‘An Act for better protection of Canadian
society against perpetrators of violent and
other crime’.”



(Witnesses and appendices: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(19)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, 4th March, 1976:

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Langlois:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the subject-matter of the Bill C-83, intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime", in advance of the said Bill coming before the Senate, or any matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, March 30, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:30 a.m., the Honourable Senator Goldenberg presiding.

Present: The Honourable Senator Goldenberg (*Chairman*), Asselin, Croll, Flynn, Godfrey, Hastings, Laird, Langlois, McGrand, McIlraith and Neiman. (11)

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its examination of the subject matter of Bill C-83, intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime".

The following witnesses, from the *Ministry of the Solicitor General*, were heard in explanation of the said subject matter:

Mr. R. B. Macauley,
Legal Adviser,
National Parole Board;

Mr. Claude Bouchard,
Vice-Chairman,
National Parole Board;

Mr. J. H. Hollies, Q.C.,
Departmental General Counsel.

On motion of the Honourable Senator McIlraith it was agreed that the various statistics be arranged in tabular form and printed as appendices to this day's proceedings. They are titled as follows:

Appendix "A": "Number of paroles granted 1969—1975"

Appendix "B": "Canada Inmate Population (*Federal Penitentiaries*)"

Appendix "C": "Number of forfeitures and revocations of parole".

Appendix "D": "Number of forfeitures and revocations of mandatory supervision".

Appendix "E": "Paroles granted to persons convicted of murder".

At 12:35 p.m. the Committee adjourned until Thursday, April 1, 1976 at 9:30 a.m.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 30, 1976

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.30 a.m. to consider the subject matter of Bill C-83, for the better protection of Canadian society against perpetrators of violent and other crime.

Senator H. Carl Goldenberg: (*Chairman*) in the Chair.

The Chairman: We will consider today the provisions of Part III of Bill C-83, containing amendments to the Parole Act.

With us this morning are Mr. R. B. Macauley, Legal Adviser, National Parole Board, and Mr. Claude Bouchard, Vice-Chairman, National Parole Board. I would ask Mr. Macauley to outline the principal changes proposed in the legislation.

Mr. R. B. Macauley, Legal Adviser, National Parole Board: Mr. Chairman, honourable senators, I have made a brief summary of the amendments which are included in clauses 15 to 33. I thought that I would first of all just briefly touch on each one of these changes and the import it has for the act, and then, if you wish, I will go back and deal with them in detail. Some of these amendments are housekeeping changes, some are enabling legislation to permit the board to perform certain functions in the future, and some of them are fairly substantive changes. If I may, I will outline them briefly and then deal with them individually.

The amendments contained in clause 15 are primarily changes in definitions. Some of the definitions are new and concern the provincial parole boards, which we will deal with later under the enabling provisions.

Clause 16 is concerned primarily with the proposed increase in the membership of the board from 19 to 26 members, and deals with the provision of an executive committee which will be responsible for formulating policy on behalf of the board. There will be authority to make rules and regulations to establish quorums for hearings and meetings. For members of the public service who are appointed to the board there is a transitional clause which contains a proviso that they will be able to continue the benefits they have acquired as public servants.

Clause 17 will provide for the appointment of regional panel members, which panels will be comprised of members of the public recommended by the chairman and appointed by the minister. They will be sitting as the equivalents of board members in dealing with serious sentences, such as imprisonment for murder or life imprisonment as a minimum punishment, and in cases of releases for those inmates serving similar types of sentences on unescorted temporary absences.

Clause 18 is a repealing clause, in that it repeals section 4.1, which was the authority for the appointment of the

present ad hoc members. Because of the proposed increase in the membership of the board there will no longer be a distinction with respect to ad hoc members. All members will be of equivalent status. Because of the provisions for the increase in board membership it will be necessary to repeal section 4.1, therefore.

Clause 19 is a minor amendment. The chairman has the authority to appoint divisions of the board to carry out duties and functions of the board. Presently it reads that a division "shall consist of two or more members," but it is felt that there are functions which could be performed by one member. So the change here is simply altering the membership for constitution of a division of the board from "two or more" to "one or more members".

Clause 20 is an enabling clause to provide for the creation of provincial parole boards for those provinces wishing to opt in to perform the functions of a board for inmates in provincial institutions sentenced under federal law.

Clause 21 will give the board exclusive jurisdiction over all unescorted absences from federal institutions. At the present time the unescorted temporary absence program is within the jurisdiction of the Penitentiary Service. This will be transferred to the National Parole Board, which will have power to delegate some of this jurisdiction back to the federal authority.

Clause 22 is also an enabling provision to allow Canada to enter into agreements or arrangements with foreign countries for the exchange of parole supervision.

Clause 23 deals with the regulation-making powers of the Governor in Council. These have been greatly expanded to allow the board to make regulations which will ensure that the inmate has the minimum rights in terms of national justice. It is primarily to make the practice of the board much more visible.

The regulation-making power also extends to provinces which decide to create their own parole boards. They will also be able to make regulations so long as those regulations are not inconsistent with any regulations of the federal board.

Clause 24 deals with the repeal of section 10(1)(c). This is a consequential amendment because the National Parole Service, as we know it now, which provides the supervision of parolees, will be transferred to the Commissioner of Corrections, which is presently the equivalent of the Commissioner of Penitentiaries. So the administration of the Parole Service will be transferred from the Board to the eventual Commissioner of Corrections.

Under clause 25 the board maintains section 11, with the qualification that, subject to any regulations, the board is not required to grant an interview, and, because of the manpower implications, the board will have to phase in

some of the programs provided for in the enabling sections of the regulation-making power.

Clause 26 is a housekeeping amendment in that it restates the effect of parole and includes the expression "may terminate the day parole of any paroled inmate," which was not specifically provided for before. There will also be an amendment in this same clause which will permit the deportation of an inmate on parole or mandatory supervision. At the present time the Immigration Act does not allow an inmate who is deportable, who is released on parole or under mandatory supervision, to be deported.

Clause 27 is a housekeeping amendment. There are some minor changes in the wording which I can deal with at a later point if there are any questions on that. We had special problems with respect to consecutive sentences imposed as a result of a fresh offence committed by an inmate who was released under mandatory supervision, and the object of this amendment is to furnish a more realistic provision for the completion of the inmate's sentence.

Clause 28 deals with the apprehension of an inmate on parole, or under mandatory supervision, and the major change here is that it is intended to apprehend the inmate and return him to custody without the necessity of going through the courts. The feeling has been that this was merely an administrative function which simply delayed the enforcement of a parole violator's sentence, or his return to custody.

Clause 29 deals with the repeal of sections 17 and 18. This, in effect, results in the abolition of what is known as forfeiture of parole. At the present time, an inmate on parole, or under mandatory supervision, who commits an indictable offence for which he can be sentenced to more than two years, has his parole or mandatory supervision automatically forfeited by law, and any new term of imprisonment imposed must be served consecutively to the remainder of the sentence that he is required to serve. There were strong recommendations that these provisions be repealed and, as a result, they will be repealed.

Clause 30 provides for the apprehension of an inmate on revocation, and there are similar provisions for the same type of procedure to be carried out should Canada enter into any agreements with respect to the supervision of parolees from foreign countries. It simply extends the provisions for the return of the inmate to custody, if and when these cases arise.

Clauses 31, 32 and 33 are merely housekeeping, in that they eliminate references to forfeiture in those respective sections. Obviously, with forfeiture being abolished it is necessary to remove any references to it in the various sections dealt with in clauses 31, 32 and 33.

The Chairman: Does this complete your summary, Mr. Macauley?

Mr. Macauley: Yes.

The Chairman: I have told honourable senators, or some honourable senators, that I asked the witnesses to be prepared to answer specific questions on issues which have been raised by senators, such as the commission of offences by parolees while on parole. The press has given considerable publicity to some cases, and I therefore asked the witnesses to be prepared to answer questions if put by senators. Senator Godfrey.

Senator Godfrey: I will start off, then, by asking how many people who have been convicted of murder, and who have been released on parole, have committed murder again.

Senator Hastings: None.

Senator Godfrey: I am asking the witness. Senator Hastings can later agree or disagree. I was told that there was one. I also heard Senator Hastings say that there was none.

Mr. Claude Bouchard, Vice-Chairman, National Parole Board: Mr. Chairman, I am afraid I do not have the answer to your question, but I could get you the answer by this afternoon.

Senator Godfrey: You say there has been none, Senator Hastings?

Senator Hastings: There was one under the Ticket of Leave Act, but none on parole.

Senator Godfrey: The Ticket of Leave Act ended when?

Senator Hastings: In 1959.

Senator Laird: So take that!

Senator Hastings: That is an expert answer. Do you want that one?

Senator Godfrey: I want to get it on the record. There has been so much criticism in the paper concerning allowing these murderers out on parole, that you would think they were going round slaughtering everybody after they get out. That is the impression the public and the law-and-order people seem to have. I would like to have the record exactly what the position is.

Senator Hastings: Can we have the number of men convicted of capital or non-capital murder who have been released on parole since 1959, together with the number that have had to be returned to custody, and for what reason?

Mr. Bouchard: Very good. I will send that to you, sir.

Senator Hastings: It is very important that we have that.

Senator Croll: I will be a little more specific. I gather, from everything I read, that our prisons are overflowing and the paroles are being reduced. Let me give you some figures. There were 4,700-odd in 1969, 59 in 1970 and 62 in 1975—or it may be 1974 or 1973; I am not sure of the year.

Senator Flynn: That is not being too specific.

Senator Croll: With regard to violations, there were 851 in 1969, 1,000 in 1970 and 1,509 in 1971. In 1973, I think it is, there were 1,366 violations. Can you reconcile these figures?

Mr. Bouchard: On the whole, the rates have been pretty consistent, depending on the numbers of people who applied, and the numbers who have been granted or denied parole over the years. I have here a sheet indicating that in 1969 there were 1,959 granted. In 1970 there were 2,785, which was an all-time high of 64 per cent.

Senator Hastings: You are both quoting different figures. You are saying that there were 1,959 what—paroles granted?

Mr. Bouchard: Yes. That is full paroles.

Senator Hastings: Where did you get your 4,700, Senator Croll?

Senator Croll: How many have you for 1969?

Mr. Bouchard: I have 1,959.

Senator Neiman: I am looking at page 109 of these statistics. For 1969 they have the number released on parole as 1,576.

Mr. Bouchard: Well, it depends. Sometimes they may be adding day paroles to these numbers. I have here the latest compilation that was prepared by the board.

Senator Croll: For what period of time?

Mr. Bouchard: For 1969 to 1975 inclusive.

Senator Croll: All right. Give us that.

Senator Langlois: And these are for full paroles?

Mr. Bouchard: Yes.

Senator Laird: They have nothing to do with temporary leave under the Penitentiaries Act?

M. Bouchard: No.

Senator Croll: All right. Read them out and we will listen.

Mr. Bouchard: I am talking now about full paroles. In 1969, there were 1,959; and you can add to this 47 days paroles. The figures for 1970 is 2,785; and you can add 123 day paroles. In 1971 there were 2,462; and you can add 336 day paroles. In 1972 there were 1,756; with 394 day paroles. In 1973 there were 1,236; and you can add 749 day paroles. In 1974 there were 1,567; plus 760. In 1975 there were 1,277; plus 820

(Note: For tabular presentation of these statistics see Appendix "A")

Senator Croll: Have you the number of people in prison over the same period of time, so we can have some idea as to the comparison? From 1972 on, with the exception of 1974, there was a decline in the number of paroles granted, but how many people in institutions were eligible for parole from 1969 on?

Mr. Bouchard: I am sorry, senator, I do not have those figures, but I could send them to you this afternoon.

Senator Croll: The only problem about that is that at that time I shall probably have something else on my mind.

Senator Langlois: But all these deferred answers will form part of the printed proceedings.

Note: For tabular presentation of these statistics see Appendix "B".

The Chairman: Oh, yes. I think, Senator Croll, you will recall that in the evidence before this committee when we are inquiring into parole it emerged that there was a stricter enforcement of parole in the seventies.

Senator Croll: I am coming to that, but I wanted to get some figures. It is not what was said at some other meeting that counts, but what is being said here.

Mr. Bouchard: I understand we are getting those figures for you now, senator.

Senator Hastings: Can we have the revocations and forfeitures during the same five years—primarily forfeitures?

Mr. Bouchard: Would you like the denials too?

Senator Hastings: No, the revocations and forfeitures.

Senator Godfrey: Can you describe the difference for us?

Mr. Hastings: Forfeiture results from the commission of another offence, and revocation means that the parole was simply revoked.

Mr. Bouchard: I have here figures for forfeitures and revocations from 1972 to 1975 inclusive.

1971	1,154	forfeited on a	9,710	cases under
1972	1,041	full total of	8,910	supervision
1973	775		7,333	
1974	491	"	7,097	"
1975	483	"	6,457	"

Senator Croll: How do you explain those figures?

Senator Hastings: Those are forfeitures of parole, not forfeitures of mandatory supervision.

Mr. Bouchard: That is right.

Senator Hastings: And what about revocations for the same five years?

Mr. Bouchard: Coming to revocations:

1971	357	revocations
1972	442	"
1973	311	"
1974	233	"
1975	277	"

Note: For tabular presentation of the above statistics, see Appendix "C"

Senator Hastings: And then you are going to give us the figures for forfeitures of mandatory supervision.

Mr. Bouchard: I must add that on these figures that I am giving you now, a number of these people were re-paroled.

Then, coming to mandatory supervision, we have the following figures:

1972	111	on a total of	1,006
1973	301	on a total of	2,270
1974	469	on a total of	3,508
1975	642	on a total of	4,048

Revocations for those same years were as follows: 51, 204, 233 and 341.

(note: For tabular presentation of these statistics, see Appendix "D")

Senator Hastings: How many warrants were outstanding at December 31, 1975?

Mr. Bouchard: That again is information I would have to get for you.

Senator Godfrey: Would you mind telling me what mandatory supervision is, as opposed to parole?

Mr. Bouchard: Yes, this applies to an inmate who has served all his time less the remission standing to his credit.

The board has no discretion here; the man has to leave the institution but he comes under the supervision of the board.

Senator Flynn: During the remainder of his technical term?

Mr. Macauley: If it exceeds 60 days he is released on mandatory supervision by law, and the board must accept the supervision of the inmate.

Senator Laird: Would that be confined to earned remission?

Mr. Macauley: It is a combination of both statutory and earned remission. If the total exceeds 60 days, then he is on mandatory supervision—that is, if he is not paroled in the meantime.

Senator Hastings: So at December 31, Mr. Bouchard, you had 6,457 men under supervision whom the Parole Board had released, and you had 4,000 under mandatory supervision, which is practically the same number.

Mr. Bouchard: Yes.

Senator Hastings: So the Parole Board and your parole supervisors are chasing around after these 4,000 men who did not want parole and who did not qualify for it, and who do not want supervision and who have in fact served their sentence. In essence, the Parole Board is not concentrating on the men who can benefit from parole.

Mr. Bouchard: Well, the Parole Board has been trying to give the same quality of supervision to these people, although it does recognize these people are more difficult to supervise; there is no doubt about that.

Senator Hastings: Yes, but you did not give them parole.

Mr. Bouchard: No, because as a matter of fact these were all people who had been considered and refused by the Parole Board.

Senator Hastings: And then you supervise them, whether they want it or not, at the end of their term.

Mr. Bouchard: The act says that the Parole Board must supervise them.

Senator Hastings: Yes, they must undertake that supervision. And I suggest to you that it is those 4,000 men who are causing parole to be regarded as it is—every time these men get into trouble, you are the cause of letting them out! The press does not differentiate between mandatory supervision and parole, and the public and the police and everybody are taking their release out on you and are criticizing the Parole Board, and that is the cause of your trouble.

Mr. Bouchard: Well, it is part of it.

Senator Hastings: It is most of it.

Senator Laird: He does not accept that.

Senator Godfrey: You have not said whether you agree with “most of it” or not.

Mr. Bouchard: I certainly agree that a lot of headlines blaming the board did not differentiate as between parole and mandatory supervision.

Senator Hastings: The parole system was for the benefit of the inmate who could accept parole, supervision and

guidance and be rehabilitated into society. That should be the work of your parole officers and board, not chasing this bunch around who do not want parole and to whom you will not grant parole. It is simply a source of anxiety to all your officers.

Mr. Bouchard: I agree, yet I believe that it is an added protection for society. We allow these people to come under supervision also, because these are basically the very bad cases.

Senator Hastings: Who will not accept supervision.

Mr. Bouchard: Some will and some will not.

Senator Croll: How long are they kept under supervision?

Senator Hastings: To the end of their sentences.

Senator Croll: And when their sentences are completed?

Mr. Bouchard: Then, that is it.

Senator Croll: What is the record of those people returning?

Mr. Bouchard: It was up close to 50 per cent.

Senator Croll: It was 80 per cent when I last checked it, or was I referring to the wrong figures?

Mr. Bouchard: No, the overall average figure was approximately 50 per cent.

Senator Croll: That is a reduction, then, from the former history.

Senator Hastings: No, senator, that means just the period of supervision.

Senator Croll: No, I am referring to those returned to prison.

Senator Flynn: For a new crime.

Senator Croll: Yes.

Mr. Bouchard: The percentage of those returned to prison in 1972 was 16.1 per cent; in 1973 it was 22.2 per cent.

Senator Croll: Where is the 50 per cent to which you made reference?

Mr. Bouchard: Twenty per cent in 1974 and 24.3 per cent in 1975.

The Chairman: Those figures have reference to those under mandatory supervision.

Mr. Bouchard: Yes, under mandatory supervision.

Senator Croll: Then you are not referring to the same situation as I brought up.

The Chairman: No, that is the point.

Senator Croll: You stay with it, then, Senator Hastings. Do you intend to follow up on that?

Senator Hastings: I said back in 1971 that mandatory supervision was the most retrograde step I had ever seen in corrections in this country. I still say that, and it is now being proved. The Parole Board is now being used to supervise men to whom you did not grant parole and who did not qualify for parole. You are not concentrating on

those you do parole, who could benefit from your supervision, assistance and guidance. You intend now to increase the board to 26 members? You used to do a pretty good job with seven; then it increased to nine; and now it is up to 29. Will that afford better decisions, or are we just going to worry about these men? Your parole staff has increased tremendously over the last four years, not because there are more on parole—there are less men paroled now—but because more men are released under mandatory supervision.

Mr. Bouchard: Mr. Chairman, insofar as the decision making is concerned, the board is not affected by these people. The Parole Service definitely is affected by mandatory supervision, and under the provisions of the new legislation the Parole Service will be detached from the National Parole Board and that responsibility will fall under the heading of the Commissioner of Corrections.

Senator Hastings: But you have more men making less decisions and you are releasing lesser numbers to parole.

Mr. Bouchard: There have been less released on full parole, but far more released on day parole and temporary day paroles than there were in the past. In other words, the board has taken the view over the last couple of years that the trial period on the street would be longer than it was formerly. It has been keeping the inmates under day parole for a longer period of time before releasing them on full parole. There is no doubt that the Parole Board has been reacting to the far greater number of violent crimes and has been taking a harder look at these people over the last few years.

Senator Hastings: But you released 2,785 in 1970 and only 1,200 in 1975. Granted you had an increase of day paroles, but the total was far less in 1975. That is because you are using your manpower under the National Parole Service to chase around after 4,000 men who might as well be released anyway.

Mr. Bouchard: No. As I say, I do not think one has a relationship with the other; it is the decision making.

Senator Hastings: You had 6,000 men on parole, as at December 31, and 4,000 under mandatory supervision. Those are the figures you gave us.

Mr. Bouchard: Yes.

Senator Hastings: Now you have pretty well as many men under mandatory supervision, over whom you have no control as to their release.

Mr. Bouchard: That is correct.

Senator Hastings: Therefore, I say that you are wasting your time. Rather than concentrating on the 6,000 men you decided would benefit by parole, you are chasing around after these 4,000 who have completed their sentences and will not benefit by your supervision.

Senator Flynn: The witness explained that this is not a problem of the board, but of the staff.

Senator Hastings: Of the Parole Service.

Senator Flynn: That does not affect the work of the board.

Mr. Bouchard: No, and, philosophically, I am of the opinion that argument could be advanced in favour, although it has been in the past creating a number of

problems for the board. There is no doubt that those turned down by the Parole Board are those who really need stricter supervision.

Senator Flynn: But the strict supervision is not given by the board.

Mr. Bouchard: It is given by the Parole Service.

Senator Neiman: Mr. Chairman, under the proposed measures which would repeal statutory remission, would there not in fact be a difference because the inmates would then have to earn their periods of time off and, I would hope, in that fashion we would find those who really do want to be released, because they will be earning their days out under the new system?

Senator Hastings: It is exactly the same; if one day out is earned for every two days served, it adds up to exactly the same.

Senator Flynn: Senator Hastings, are you suggesting that the care of those under mandatory supervision should be undertaken by a body other than the Parole Board?

Senator Hastings: I believe that the mandatory supervision should be repealed and the efforts concentrated on paroled inmates who can and will benefit from it. When a man has served his sentence he has earned his release and we should let him go.

Senator Croll: And he will commit another crime.

Senator Hastings: He will any way.

Senator Flynn: What would be the practical result for the board in that event? Do you think there would be less work for it?

Mr. Bouchard: It would make no difference for the board, because these people are being interviewed and given panel hearings in any event. If the board denies them, their job is concluded.

Senator Asselin: Yes, but when they are released?

Mr. Bouchard: Then it becomes a National Parole Service problem, because they then come under the supervision of that body.

Senator Asselin: Is it not your responsibility?

Mr. Bouchard: No. Previously it was and it still is; but if this legislation is enacted it will not be.

Senator Hastings: How is it your responsibility now?

The Chairman: Well, does the National Parole Board not operate the National Parole Service?

Mr. Bouchard: It does now.

Senator Laird: Mr. Chairman, could I ask a supplementary to this? You are, of course, acquainted with the proposed provision in this bill regarding dangerous offenders?

Mr. Bouchard: Yes.

Senator Laird: Will that relieve you in any way of some of the burdens which we have been discussing?

Mr. Bouchard: Mr. Chairman, no. My attitude to that would be no. I think the attorneys general in the various provinces will give the tone to the dangerous offenders

section. Some will want to use it; others will prefer not to use it—just as they have or have not been using the habitual criminals provisions.

Senator Neiman: Do you find a great variation from province to province in how the present provisions have been applied?

Mr. Bouchard: We don't now, but at one time we did. For instance, British Columbia was using it to a large degree, while other provinces used it perhaps in one or two cases a year.

Senator Neiman: Has that variation lessened?

Mr. Bouchard: Very much so.

Senator Hastings: I had a discussion with respect to the proposed dangerous offenders legislation and the review for parole at the end of three years. Correct me if I am wrong, but under the present act you review, first, at the end of the first year, and yearly thereafter?

Mr. Bouchard: Yes.

Senator Hastings: What does your first review consist of?

Mr. Bouchard: Basically, it is exactly the same review that we give any other inmate.

Senator Hastings: Is there an interview?

Mr. Bouchard: Yes. There is a full interview where we ask the inmate what are his plans and what he hopes to achieve. It depends very much on how the inmates react to the label.

Senator Hastings: Have you ever released a man at the first hearing?

Mr. Bouchard: Not that I know of, sir.

Senator Hastings: At the second?

Mr. Bouchard: I would have to check on that. I doubt it very much.

Senator Hastings: I doubt it too. We heard that the average sentence for a DSO was nine and, for the habitual, seven. I would like to know the shortest and the longest sentence, if I could. Under the new act it will be three years, and yearly thereafter—three and two . . .

Mr. Bouchard: Yes; three years for the first review . . .

Senator Hastings: And every two. I raise the point that your review at the end of three years is just simply a cursory examination of the man, as is your first one now, and your second, third and fourth; that you do not get very serious about the man until about five or six or seven. I am saying that you raise hopes in these individuals by these examinations, which has a very debilitating effect on the inmate, and that it should be five. Would you care to comment?

Mr. Bouchard: Certainly this was the board's feeling, so far as the present legislation was concerned: having to see them after the first year and then each year thereafter. We felt it was very hard on the board and on the people who were being interviewed. We feel that three years is a reasonable amount of time, and that two years thereafter is also a reasonable amount of time.

Senator Hastings: Is it not better to be a dangerous offender than to take 10 years for rape?

Mr. Bouchard: Or to take 25 years for armed robbery.

Senator Flynn: That was my point. It seemed very logical.

Senator Neiman: There appears to be an anomaly in the proposed legislation. I notice that clause 25 says:

. . . the Board is not required, in considering whether parole should be granted or revoked, to personally interview the inmate or any person on his behalf.

So you are proposing to dispense with that.

Mr. Bouchard: No. The idea here is to give every inmate who is eligible for parole one interview—that is, face to face.

Senator Neiman: At what point?

Mr. Bouchard: At his parole eligibility date.

Senator Neiman: But not necessarily at the first date?

Mr. Bouchard: Not necessarily the first review. The board is planning to meet these people at the time of the first review, but on subsequent reviews it would not have to meet with them. In other words, to make it simpler, if a man is eligible after four years, he appears before the board. Nothing prevents him, six months after, from applying for day parole, and, if he is turned down, from applying again and again. All we are asking is that if he is seen after his initial five years and is deferred for a period of two years, in between those two years the board can give him a paper review as opposed to another personal interview.

Senator Neiman: But that is not really in the amendment as it is stated here. There is a blanket statement that you do not have to interview them personally.

The Chairman: It says:

Subject to such regulations . . .

That is being added.

Senator Neiman: Yes.

Senator Laird: In that connection, may I ask a general question which, however, is pertinent to almost every problem including this one? I notice that in clause 23 there are a number of items which can be dealt with by regulation. Frankly, some of us in the past have taken a rather dim view of broad powers of regulation being conferred. Why do you feel, if you do, that those broad powers are justified?

Mr. Bouchard: I would think the important reason is that it gives the board more flexibility and a little more discretion than would be the case if these regulations were transferred into legislation.

Senator Laird: Perhaps so, but we need certainty in the law. That is what worries many of us: too much power given to make regulations, and therefore lack of certainty.

Mr. Bouchard: That may be so. Also the board feels that with changing times—and there have been a lot of changes since 1969—that to be bound by legislation could do far more harm than having sound regulations.

Senator Laird: I am afraid I cannot go along with that generality. In these particular topics which are provided for under clause 23, can you pick out any one which you might say cannot be adequately dealt with by legislation and should be dealt with by regulation? Pick out any one by way of a test.

Mr. Bouchard: Well, for instance, setting up eligibility dates for different categories.

Senator Laird: What paragraph are you reading from—(a), (b), (c), (d) or (e)?

Senator Hastings: Paragraph (b).

Senator Laird: All right, we are looking at paragraph (b) on page 59.

Senator Hastings: It says:

(b) prescribing the portion of the terms of imprisonment that inmates or classes of inmates must serve before temporary absence without escort may be authorized . . .

Senator Laird: What have you to say about paragraph (b), Mr. Bouchard?

Mr. Bouchard: For instance, these classes will vary depending on the type of offences. The general rule, if I remember correctly, is that no one will be allowed a TA, temporary absence, before six months or half the term toward parole eligibility, except certain categories which will be prescribed by regulation—for instance, violent offenders.

Senator Neiman: By whose definition are you using the term “violent offenders”? The present superintendent? Who makes that decision about violent offenders?

Mr. Bouchard: The board will make that decision. The board will categorize them, will put them in the category.

Senator Laird: Why cannot they be categorized definitively in the legislation instead of by regulation?

Mr. Bouchard: That is a very good question, senator. There are a number of reasons, one being the number of factors involved in various offences. For example, some of the factors involved in the offence of robbery with violence are whether the gun was loaded, or what type of gun it was—whether it was a pellet gun or a fully loaded submachine gun. All of these factors require value judgments.

Having these categories outlined in the regulations, as opposed to locking them into the legislation itself, provides greater flexibility for value judgments. Still dealing with the offence of robbery with violence, if I were attempting to take a satchel away from you against your will, the simple fact that I touched it while you were holding it makes the offence robbery with violence, notwithstanding that there would be no actual violence involved.

If the categorization is locked into the legislation itself, there is then no flexibility whatsoever for value judgments.

Senator Laird: And that, of course, you would consider a disadvantage. I would be very interested in having Senator Hastings pursue this line of questioning, if he is willing. He is the one who knows more about this than anyone else in this room.

Senator Hastings: You say you would be locked in by legislation. It seems to me that you are being locked in when you use the phrase “classes of inmates.” We all know that there is rape and there is rape—in other words, the circumstances vary. This would also lock us into the view that a rapist will always be a rapist from the date of his conviction until the date he qualifies for a temporary absence. I think more discretion is required, not less. However, I think you are treading on very dangerous ground when you use the phrase “classes of inmates,” because you know perfectly well that the circumstances and conditions with respect to the offence for which an individual has been convicted have to be evaluated. You cannot say that all rapists have to serve three-quarters of their sentences, when you know perfectly well that some of them would be eligible for TA after serving one-fifth of the sentence.

Mr. Bouchard: I may have used the wrong phrase. I should have said “classes of offences”, which would leave room for value judgments.

Senator Hastings: But you are not doing that. You are locking yourselves into classes of inmates. What is a “class of inmate”? For example, would all inmates convicted of armed robbery, regardless of the circumstances, be one class?

Senator Asselin: It would be a matter of interpretation.

Senator Flynn: But it could be related to the inmate's behaviour in jail.

Senator Hastings: That was my next question. The fact that an individual committed armed robbery is not to say that he will still be a vicious person three years after committing that offence, or that he should not qualify at a different time. You are putting all inmates into these various classes, and a great many of them are going to suffer because of the worst offenders.

Senator Flynn: You will not have any flexibility in dealing with dangerous offenders.

Mr. Bouchard: No.

Senator Flynn: For example, you would not be able to prescribe other regulations than those that are provided in section 695.1.

Mr. Bouchard: No, except that the eligibility date for parole is soon enough that the board would gain the necessary flexibility from the legislation.

Senator Flynn: But you could not go against section 695.1 by using the regulations under clause 23.

Mr. Bouchard: No.

Senator Flynn: How would you reconcile that? You would have to establish some relationship between that which is provided strictly in the law and that which is prescribed by regulation.

Mr. Bouchard: Yes.

Senator Flynn: That is a strange thing.

Senator Neiman: Mr. Chairman, may I just ask whether inmates are made aware at the present time of the types of regulations which come into play when considering temporary absences?

Are the inmates allowed to know the way in which they are being categorized, or the type of regulations considered in respect of applications for parole?

Mr. J. H. Hollies, Q. C., Departmental General Counsel, Ministry of the Solicitor General: With your permission, may I try to answer some of these questions?

The Chairman: Certainly.

Mr. Hollies: First of all, in answer to Senator Neiman's question, the present situation is that this is not under the jurisdiction of the National Parole Board, so it does not come within the regulations. It comes within the Commissioner's directives in the Penitentiary Service, and those directives are made available to inmates. At the moment, they can look at the Commissioner's directives in point and determine the category into which they fall, whether it be that of a parole violator, or someone who has been convicted for the second time, and so on, making them ineligible for temporary absence without escort, or for temporary absence at all, for a certain period of time.

If I may, I should like to revert to the question put by Senator Laird, and followed up by Senator Hastings, as to why this material is in the regulations rather than in the legislation.

On a purely academic basis, solely on an academic basis, it would be preferable if a great number of these things were contained in the legislation. The flexibility argument, of course, is one that must occur to us, because the crime conditions of the country change, and those changing conditions must be reflected in the policies of the National Parole Board.

If the board is constrained entirely by the legislation, there is no way that it can adapt itself to those conditions. For example, if there is suddenly a wave of a certain type of offence—and I need not be specific—it may be that to reassure the community of its safety, the eligibility for persons convicted of that offence must be further restricted, in which event it could be done by regulation.

There is also, of course, always the discretion of the board. Perhaps more important, though, is the fact that when the act was first designed, much of this was to be included in the legislation. It was then costed in terms of manpower and financial resources—and I need not labour to honorable senators the difficulties that the government experiences these days in getting any additional funds.

Senator Laird: You struck a responsive chord right there.

Senator Hastings: Not in this area.

Mr. Hollies: To have all these regulations implemented, Mr. Chairman, would require an expenditure of something of the order of \$17 million, which is simply not available. There is the gearing up by the board in terms of training of staff and additional manpower resources to do some of these things that will be prescribed by regulation. There was an alternative. We could have put it all into the legislation, with the proviso that it would not come into force until proclaimed. Indeed, that is the general tenor of Bill C-83.

This alternative might commend itself to many people. Indeed, it is a viable one. However, what we were afraid of is that if the legislation were to come into force only on proclamation it would only add to the uncertainty of those in our penitentiaries now. They see the thing on the statute

books; they cannot understand that it cannot be done immediately. I am thinking of such things as the right to a revocation hearing. I say a right rather than a privilege. Mr. Bouchard can speak to this more succinctly and accurately than I can, but I understand that such a hearing is accorded wherever reasonably practical now. When the regulations can come into force, that will be solidified and they will be able to point to a right enforceable in the courts through regulations. I do not think this is a complete answer to your question, Senator Laird, nor to yours, Senator Hastings, because I think that other options have merits and demerits. However, this is the reason we took this option in this particular area.

Senator Laird: That is understandable. I agree that you simply cannot rule out regulations just in general terms; sometimes they are desirable. The problem that always faces us is whether the other alternative would create greater certainty so that the individual would know precisely where he stood. However, you have made a pretty good case there.

Mr. Hollies: I would like to add one thing, if I may, with the chairman's permission. It was mentioned that the regulations themselves would entail a measure of inflexibility. That is true, but there is a way round it, a way that has been used on very rare occasions in connection with murderers not subject to statutory bar. That is where there is a man who by all tests should be out on the street—tests of community interest, tests of the interest of the individual; it is possible to make special regulations to take care of that one person. That has been done in, as I say, very rare instances, in order to avoid the categorization by class that does him an injustice.

Senator Flynn: Would you agree that the same rule should be applied to dangerous offenders?

Mr. Hollies: With respect, Senator Flynn, I would not. The dangerous offender has been categorized as such—I realize I am speaking about the obvious—and is subject to incarceration for the rest of his natural life unless the board decides otherwise to get him out. Mention was made of the person who got ten years for rape, or, as I think the vice-chairman said, 25 years for armed robbery. They at least can say, "We are going to get out of here at some time, whether or not the Parole Board agrees with us." That is, if they live long enough, if they live the 25 years. However, when one thinks of the safeguards that have been put on by the act to categorize those people as dangerous offenders in the first instance, then I think again you need special conditions surrounding whether they should be released. Because of the very severity of the sentence, which is the equivalent of a life sentence, I think periodic reviews are necessary. There may be a change in psycho-surgery, aversion therapy, whatever it may be; these are people mainly with psychological hang-ups, and identifiable ones.

Senator Flynn: In principle, here you could probably apply better treatment to this class of offender than you would be able to apply to the regular offender.

Mr. Hollies: Conceivably it can have that effect.

Senator Flynn: That is what worries us.

Mr. Hollies: Also, with respect, it can mean that they are in for very much longer than had they got a fixed term. This is my point. I suggest you have to weigh one thing against the other.

Senator Flynn: Do you not think that you are raising false hopes in this class of offender by providing a review after three years and then after two years?

Mr. Hollies: I understood Mr. Bouchard to say that he and the board took the view that the present legislation, calling for a review after one year, did indeed raise false hopes. However, I understood him to say that the three-year initial review and in two years thereafter was not subject to quite the same defect by way of raising false hopes. I think I would defer to the vice-chairman on that.

Senator Flynn: The point we are trying to make is this. I think we should do something in this bill to provide that someone who is considered or classified as a dangerous offender should not be in a better position than one who is simply there as a regular offender.

Mr. Hollies: If he had ten years he could be released after serving one-third of his sentence, which on ten years is three and one-third years, possibly.

Senator Flynn: It seems to me that the idea should be to have the dangerous offender considered as such and interned as such after he was sentenced for the specific crime, and then there would be a system of review, but he would not be in a better position because he is considered as a dangerous offender.

Mr. Hollies: I would like to duck that one, if I may, by taking the coward's way out and saying that this legislation is basically the responsibility of the Minister of Justice.

Senator Flynn: We should have known!

Senator Neiman: I wonder if some comment could be made on the question of the legislation concerning the dangerous offender, and whether those who are presently incarcerated as habitual offenders or dangerous sexual offenders should in any way be reclassified? In other words, I am talking about retroactivity, and I know the difficulty of that. Has the department considered this problem in any way?

Mr. Hollies: This has indeed been drawn to our attention, perhaps unnecessarily, if I may so. I am speaking of things that happened, of course, outside this committee, not from honourable senators. There is a meeting scheduled within the next two weeks to see what should be done particularly about the habitual offenders whose categorization has disappeared in the new legislation. I cannot, of course, speak for Mr. Outerbridge, the Chairman of the National Parole Board, but I have to meet with him within the next two weeks to decide how far a review should be conducted on an individual basis of those now serving a sentence as habitual offenders. I do not think the dangerous sexual offenders are in the same category, because they are still caught by the same definition.

Senator Croll: Were you able to obtain the figures you sent out for, of the number of people who were in institutions in 1969 and on?

Mr. Bouchard: Yes, I have them.

Senator Croll: Would you mind giving them to us?

Mr. Bouchard: In 1969, 7,186.

Senator Hastings: That is just federal institutions.

Mr. Bouchard: Yes, that is federal institutions.

Senator Hastings: Parole applies to federal and provincial.

Mr. Bouchard: I am sorry, Mr. Chairman, but we do not have the provincial figures.

Senator Hastings: So the figure does not mean much. Paroles cover federal and provincial institutions. The figure you are giving us just covers federal?

Mr. Bouchard: Yes.

Senator Hastings: It runs at around 25,000.

Senator Croll: 25,000 what?

Senator Hastings: Inmates in custody.

Senator Croll: At any one time?

Senator Hastings: At any one time.

Senator Croll: Does it vary?

Senator Hastings: Within a thousand.

Senator Croll: Has it been up and down over the years?

Senator Hastings: Not very much.

Senator Croll: That figure does not seem to be available. Perhaps it could be sent in, because it will take some time to get it.

Mr. Bouchard: Yes, we will try to get the provincial figure and send it in to you.

Senator Croll: Don't you, as a matter of record, know from month to month what the provincial figures are?

Mr. Bouchard: We have the figures of people who apply and those who are released, but we do not keep the overall population figures of each province.

Senator Croll: But in your annual report you indicate the number of people in institutions.

Senator Hastings: Federal.

Senator Croll: I know. You do not indicate that the number of paroles are federal and provincial.

Mr. Bouchard: I have the figure here for provincial parole. I have all the provincial parole figures, but I do not have the total provincial population. Incidentally, the figures I gave you were with respect to federal parole only.

Senator Croll: You know we are trying to get an overall picture. If the parole is applied to both federal and provincial, we should have the figures for prison population for both in order to compare them, to see the different rates of recidivism and to become aware of what is happening. Perhaps those figures could be prepared for us for another occasion.

Mr. Bouchard: Well, Senator Croll, the figures I gave earlier affected only federal institutions, but I have now been handed other figures which will go along with those earlier figures. You might find these of some help.

Senator Croll: All right.

Mr. Bouchard: In 1969 the prison population was 7,186. In 1970 it was 7,161. In 1971 it was 7,548. In 1972, it was 8,361. In 1973 it was 9,207. In 1974 it was 8,616. In 1975 it was 8,826.

Senator Croll: Exactly what are those figures?

Mr. Bouchard: These are the figures for the population in penitentiaries for those years.

Senator Croll: Can you also give us the figures for paroles at the provincial level? How many paroles are there at the provincial level? Perhaps Mr. Hollies can explain it; he is a lawyer.

Mr. Hollies: I am a lawyer, sir, but with the greatest of respect I am not conversant with the statistics. I can say that there are two systems of parole, in that in the province of Ontario and the province of British Columbia there are provincial boards of parole which have jurisdiction only over an indeterminate sentence; that is, an indefinite sentence of two years less a day or any shorter period. I would have to rely on Mr. Bouchard for the figures on this, but I rather suspect the provincial boards of parole, for one reason or another, do not furnish us with statistics.

Then again—and here too I should like to rely on Mr. Macauley and Mr. Bouchard—there is some question of dual jurisdiction where there is a definite and indefinite sentence upon which parole is granted.

Senator McIlraith: Will you follow with those other provinces, then, Mr. Hollies, where you are dealing with very short-term sentences, such as a ten-day sentence or a thirty-day sentence, so that when the statistics come in they will have some meaning for us?

Mr. Hollies: I should like to leave that to the vice-chairman, Senator McIlraith, if I may, to explain how the national Parole Board operates in respect of those short sentences in other provinces where only the National Parole Board has jurisdiction.

Mr. Bouchard: In Ontario, the National Parole Board is only responsible for the definite portion of the sentence, but it also includes the indefinite portion if the National Parole Board grants the parole during the definite period. If the National Parole Board denies parole during the definite period, then the Ontario Parole Board picks up during the indefinite portion of the sentence. But the Ontario Parole Board cannot release inmates during the definite period of imprisonment.

Senator Croll: And you have nothing to say about the indefinite.

Mr. Bouchard: We do, in the sense that through an arrangement between the province and the National Parole Board, if the National Parole Board grants a parole during the definite period, that encompasses the indefinite portion.

Senator Croll: Is that an understanding with all provinces?

Mr. Bouchard: No, it is not. Other provinces do not have parole boards, except British Columbia, and the B.C. Parole Board deals only with young adults.

Senator Godfrey: Could you explain why the provincial boards decided to take over the indefinite period? What was the theory behind that?

Mr. Bouchard: So far as I know, Ontario is the only province which has the definite-indefinite situation.

The Chairman: B.C. also has it.

Mr. Bouchard: British Columbia has it, too, but only for the young adult category.

Senator Croll: Ontario always had a board, but they did not know what to do with the members so they just let them stay. I remember it very well.

Senator Asselin: Under the new law the provinces will have the right to establish their own parole boards.

Mr. Bouchard: Yes.

Senator Asselin: Did you receive any information about the provinces that are interested in establishing their own parole boards?

Mr. Bouchard: Yes, we did. There was consultation some years back. Some provinces were interested. British Columbia, Ontario and Quebec were, and are now waiting for the legislation to be passed.

The Chairman: I might point out that in this committee's report of 1974 we recommended that the definite-indeterminate sentences provided in the Prisons and Reformatories Act should be abolished.

Mr. Hollies: May I interject on that, Mr. Chairman? We are quite cognizant of that recommendation. It would have been included in this legislation, but we could not link it to peace and security at this stage. I think it is fair to say that the ministry intends to bring up further amendments in the fall, when they can, which will include the abolition of the indefinite sentence.

The Chairman: Going back if I may, to our discussion of mandatory supervision, I might point out that our committee also recommended that:

The provisions for mandatory supervision as they now exist in the Parole Act, should be repealed and, in lieu thereof, the law should provide that the last third of every definite term of imprisonment should be a period of minimum parole to which the inmate is entitled.

Senator Laird: We were pretty smart.

The Chairman: May I ask one question on statistics? A great many statistics have been quoted. When we made our study, we had a great deal of trouble with statistics. We said:

This Report has made little use of statistics on parole because the information is inadequate. It is not reliable enough to give even accurate head counts. It neither permits accurate statistical descriptions, nor meaningful assessments of various programs. Parole statistics are not alone in this sorry state. Statistical information on other programs such as remission, probation following imprisonment, temporary absence, etc., is either non-existent or almost meaningless.

We have a whole chapter—chapter 12—on this.

Considering that the senators are trying to get statistics, which are important from the point of view of enabling us to make a judgment, has there been any improvement in the preparation of statistics, Mr. Bouchard?

Mr. Bouchard: Mr. Chairman, I can tell you that there has been improvement, but I would also like to imitate Mr. Hollies here, and take the coward's way out, by telling you that statistics are now being kept by the National Parole

Service, which will come under the Commissioner of Penitentiaries.

The Chairman: Well, that is one answer.

Senator Hastings: Could we deal with page 54, subclause (2)? You add the words, "... and includes day parole;" Why did you just include day parole? What happened to other forms of parole, such as principal parole?

Mr. Macauley: Well, I believe the board made something like 90 dispositions. They found that this was unwieldy and that it was very difficult to figure out exactly what was meant. The board felt that the focus should be on having a minimum number of decisions. There were all sorts of things like, as you suggest, principal in parole and principal in parole with gradual, and there were certain situations in which if and when certain conditions were fulfilled a person could go on parole. I think the feeling is that you should grant parole with effect from the specific date when all these conditions have been met, rather than granting it, and saying that the person concerned may be released, or that a certain thing may happen to that parolee if and when certain types of criteria are met. They have therefore reduced the number of decisions from somewhere in the high eighties, I think it was, or low nineties, to approximately 7 or 8 decisions in which parole will be either granted or denied, or day parole granted or denied, and the others will be in the nature of special instructions, or special conditions attached; but in essence it would be either a granting or a denial of parole. We were concerned about the courts looking at it and reading a certificate perhaps saying, "Parole and principal with gradual," and they could very well say, "Well, what is this? Don't you either grant a parole or deny a parole?"

There has therefore been a complete revision of the dispositions. We are trying to limit them as far as possible to those situations where it relates exactly to parole, or day parole.

Senator Hastings: Why did you add day parole? That was always there, was it not? I just wondered why that was necessary.

Mr. Macauley: The courts had been distinguishing between day parole and parole. We found we were only able to terminate day parole. They drew a fine distinction by suggesting that because, in the legislation, we have specifically singled out day parole for termination, it was not subject to suspension and revocation. We therefore wanted to make it clear now that we are able to suspend and revoke a day parole.

Senator Hastings: You said "terminate". You do not revoke a day parole, do you? You terminate it.

Mr. Macauley: We want to be able to do both, because in an ordinary termination that will basically be reserved for those situations where it is not necessarily the inmate's fault that he has to be returned. If, for example, he went on a special project, or an educational program, and it was terminated without his having done anything, he would be terminated, and there would be no consequences; but a person may be let out on a three-month day parole and abscon, in which case it would be necessary to bring him back, and a situation may arise where revocation would be in order.

There are certain consequences that flow from a revocation—for example, loss of remission—so the board wanted to be able to deal with day parolees in both ways, so that

they would have a discretion if the situation ever arose where it was obvious that the man should not be penalized for whatever the circumstances were. Previously, in the act it simply said that we could terminate day parole, but there was really no mechanism for bringing the person back.

Senator Hastings: He was unlawfully at large, was he not?

Mr. Macauley: Yes. You could terminate him and bring him before the courts for being unlawfully at large; but this limited the discretion of the board, because there may be situations in which you may wish to return the person concerned to custody because of the circumstances. Now, however, when we terminate him we have no way of getting the man back into custody except by charging him with being unlawfully at large, where he is subject, quite possibly, to a new term of imprisonment on conviction for being unlawfully at large.

Senator Hastings: So this way he would be revoked or terminated. Those are the only two terminologies we are going to use; we are not going to use the other terminology any more, of forfeiture?

Mr. Macauley: Forfeiture has gone.

Senator Hastings: In subclause (3) you refer specifically to the Ontario and British Columbia boards. In the light of the fact that other provinces, as you have just indicated, are considering setting up their own parole boards, would it not be better legislation, instead of specifying those two, just to say, "Any provincial board or any other board that may be hereafter created by a lieutenant governor in council"?

Mr. Macauley: Yes. That may be a preferable way of doing it; but I believe the reason it was put in in these terms is that those provinces have an existing board, obviously, and they may wish to add this extra jurisdiction to the board that they have already set up, as opposed to creating an entirely new board in the provinces that do not have any at the moment.

Senator Hastings: But if Alberta created a board, for example, we would have to come back and amend, so would it not be better to say, "any provincial board or any board that might hereafter be created"?

Mr. Hollies: With respect, senator, no. The legislation, as cast, permits one of two things: either the setting up of fresh boards, which is specifically provided for in the legislation; or the continuation in respect of Ontario and British Columbia of their boards as now constituted under the Prisons and Reformatories Act, with expanded powers. There is the option of setting up a new board, or retaining the present boards, with expanded powers, in Ontario and British Columbia, and we specified that those two boards make it quite clear that their continuation was possible as a matter of law.

Senator Godfrey: They are provided for, in fact.

Mr. Hollies: Yes, sir.

Senator Godfrey: Again I must make it clear that I was not on the committee when it presented this study on parole in Canada, so I am very ignorant on these matters. Could you explain why it was decided to take parole services away from the National Parole Board and give them to the Commissioner of Corrections? I presume it

was because the Senate committee recommended it. If so, just for the record in this committee now, what was the thinking behind that?

The Chairman: The Commissioner of Corrections, as he will be called, is now the Commissioner of Penitentiaries.

Mr. Bouchard: It was felt over the years that there should be a continuum in the treatment of offenders and that while one arm of the correctional system was looking after the inmates while they were inmates, there should be some follow-up in the way in which they were treated. This idea had been in the air, for, I imagine, over 15 years. But it is only a few years ago that a committee, a task force, was set up that went around the country and discussed with parole officers across the land and the penitentiary people—in fact, all people involved in correctional work—and everyone felt that there should be, within an agency, a prison arm and a community arm. So then they started working on the legislation, and this is the direction it has been following ever since.

Senator McIlraith: Would you clarify what committee that was that went around the country? It was a staff committee, was it?

The Chairman: I think it was the committee under Associate Chief Justice Hugessen.

Mr. Bouchard: No, that was a ministry committee.

Senator Hastings: But, essentially, it is the beginning of bringing the various segments together to deal with the inmate. This is a first step towards having the custodial and parole elements under one authority to work together with respect to the inmate.

Mr. Bouchard: Yes.

Senator Hastings: I think our Senate committee suggested that the police, the judicial, the custodial, the parole and the after-care authorities were all working in different directions, each not knowing what the other sector was doing. So this is another recommendation of our committee. It is to be hoped that the rest will also be carried out.

Mr. Bouchard: Much of it is being carried out now. The board has set up a national joint committee which includes penitentiary, Parole boards, parole services and the police forces across the country, and that has been operating very well.

Mr. Hastings: Very well?

Mr. Bouchard: Very well.

Senator Hastings: Some of the statements by the police do not indicate that.

Mr. Bouchard: When I said "very well", you must keep in mind that there was no communication whatever three years ago, and now we have police officers in some regions in Canada acting with TA boards across the country and sitting with all sorts of boards feeding information that the board was never able to get on penitentiaries in the past. This deals with TAs and information prior to the board's releasing the inmate.

Mr. Chairman, I have now been handed some murder statistics.

The Chairman: Would you read them to us? We want them on the record.

Senator McIlraith: Mr. Chairman, sometimes when it is read it does not appear in the printed record as well as it would if it were treated in tabulated form. Perhaps somebody could look at it to see that what would appear in the printed record would be an accurate way of portraying it.

The Chairman: Well, would you move that the tabulation be printed as an appendix to the report?

Senator McIlraith: Well, if the tabulation were in such form as to give a better picture, then I would so move.

The Chairman: Is it in a form which can be printed in the record of proceedings, Mr. Bouchard?

Senator Godfrey: Sometimes it is better to have the tabulation right in the body of the printed proceedings rather than having it as an appendix.

The Chairman: It has been suggested that it should be read and then printed as an appendix.

Senator McIlraith: That would be fine.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Chairman: All right, Mr. Bouchard, would you now read the table of murders?

Mr. Bouchard: I have here a record of the people released on parole between 1959 and March 31, 1975. For non-capital murder the number released on first parole was 93. Twenty violated first parole, and the breakdown is as follows: 12 were revoked and 8 were forfeited. The number released on second parole was 3, for a total of 96. One of these violated his second parole. The failure rate here was 21 per cent.

Under the heading of Capital Murder—Death Commuted, the number released on first parole was 76. Of this number, 10 violated first parole, with 8 being revoked and 2 forfeited. Then the number released on second parole was 8, and 2 violated, 1 by way of forfeiture and 1 by way of revocation. The number released on third parole was 1, and he did not violate it. This amounted to a total failure rate in this category of 14 per cent.

I have one more category, Mr. Chairman. For non-capital murder and capital murder, releases totalled 181 and violations totalled 32, for a failure rate of 17.6 per cent. Five of these people were convicted of capital murder and sentenced to life imprisonment because they were juveniles.

Senator Hastings: That is five out of 93.

(For table setting forth statistics, see Appendix "E")

Mr. Bouchard: Between 1963 and 1975, the number of people who murdered a second time while on parole totalled 3. One person committed both murders in Canada and was executed in 1944.

Senator Hastings: You said 1963 to 1975.

Mr. Hollies: This document was prepared in question and answer form and, indeed, is a part of the package which was tabled by the Minister of Justice in the other place. I do not know whether it was made available to honourable senators at the same time. However, the question was, "How many persons convicted of murder have murdered a second time while on parole, temporary absence, incarcerated or after an escape from an institu-

tion?" The vice-chairman was referring to this caveat in the response. With the exception of one case, which he just cited, that of the execution in 1944, our knowledge of convicted murderers who have murdered again is limited to cases occurring since 1963. The study is based on the review of the CPS, the Canadian Penitentiary Service, case files. For obvious reasons, the study excludes cases in which the charge was originally for murder and the conviction was for manslaughter or the original charge was for manslaughter.

Mr. Bouchard: The other two persons who were involved in the same first murder, which was committed in the United States, jointly committed their second murder in Canada.

Senator Hastings: They were unlawfully at large from a United States prison, were they not?

Mr. Bouchard: No; they had been released.

Senator Hastings: They had been released, but they were not released by the National Parole Board.

Mr. Hollies: The question was, senator, as to how many people convicted of murder and released committed a second murder. The parole, in this instance, was granted by the United States authorities.

Senator Hastings: Where did the murder of the two take place? Did I hear you say that it was not in Canada?

Mr. Hollies: Two people were convicted of murder in the United States, subsequently paroled, then came to Canada and where involved in a murder here. So they fall in the general category of persons who, having been convicted of murder, have been paroled and come within the knowledge of the Canadian system.

Senator Asselin: Were they Canadian citizens when they committed their first murders, or American citizens?

Senator Hastings: They were tourists.

Mr. Bouchard: That is not stated in the report I have.

Senator Hastings: The total of those who were paroled and murdered a second time is three. One was released by the clemency division and two were released by the United States releasing authority.

Mr. Bouchard: That is correct.

Senator Hastings: And none has been released by the National Parole Board.

Mr. Bouchard: No, because the National Parole Board did not come into being until 1959.

Senator Godfrey: And the one case goes back to 1944?

Mr. Bouchard: That is correct.

Senator Godfrey: So no one has been released in Canada since 1944 and has committed a second murder?

Mr. Bouchard: That is correct.

Senator Hastings: You had better get that straight; no one has been released by the National Parole Board.

Mr. Bouchard: No; I have other figures here.

Senator Godfrey: I thought the 1944 statistic was the only one you had.

Mr. Bouchard: That was by the National Parole Board.

Senator Godfrey: I am sorry; I am confused.

Senator McIlraith: There seems to be a little confusion in connection with the answers. It should be pointed out that the National Parole Board was established in 1959 and only started paroling persons convicted of murder after a number of years had elapsed. Due to the length of sentences in murder cases, the parole of murderers is a relatively new development. So far as I know, there have been no convictions for murder of persons paroled by the National Parole Board—that is, of any convicted murderer paroled by the National Parole Board.

Mr. Bouchard: That is correct, sir.

Senator McIlraith: That is a point which should be made clear. Those statistics are relatively new, because if we were to establish the number of convicted murderers since the National Parole Board came into being we would see that it is relatively small and it is not an even number from 1959 on. It was a small number at first and increased as the years passed. Therefore, all those factors must be taken into account in analysing these statistics. We really need a little fuller information than is available now before we can fully utilize these statistics.

Mr. Bouchard: As a matter of record, Mr. Chairman, maybe this answer supplied by the inmates statistics unit of the Canadian Penitentiary Service should be revised, because it is not accurate. It does make reference to "while on parole," and, the Parole Board not having been created before 1959, the answer to that question should read, if it refers to parole, zero.

Senator Godfrey: I am still not quite clear, because there have actually been 181 released by the National Parole Board.

Mr. Bouchard: Yes.

Senator Godfrey: So it is not an insignificant number. The second point is, with reference to the case in 1944, was the second murder then followed by execution?

Mr. Bouchard: Yes; six months after his ticket of leave in December 1943 he killed a 16 year old girl in Manitoba and was hanged in July 1944.

Senator Godfrey: How far back beyond that do we know there were other cases?

Mr. Bouchard: That is as far back as we go.

Senator Godfrey: And you do not know whether there were other cases during the 1930s or the 1920s?

Mr. Bouchard: No, this would be the only one, because the original death sentence in this case was pronounced in 1929, for the shooting death of a Winnipeg woman. The man was released in 1943, killed again in 1944, and was subsequently hanged.

Senator Godfrey: It is interesting to note the type of murder. Originally it was a woman, rather than an organized type of crime.

Mr. Bouchard: No.

Senator Godfrey: And he killed a girl the second time.

Mr. Bouchard: Yes.

Senator Godfrey: So, as far as the records go back, that is the only known case in the history of Canada?

Mr. Bouchard: Yes, it is.

Senator Hastings: By the Parole Board.

Senator Godfrey: No; it is not by the Parole Board at all.

Senator McIlraith: It is a ticket of leave.

Senator Godfrey: Were there any ticket-of-leave cases going back to the start of the ticket-of-leave system, other than that one case?

Mr. Hollies: Senator Godfrey, this is the only case of which we know. However, this is the only as was mentioned, due to the fact that these statistics are really not reliable prior to 1963 and despite the greatest search possible, which had to be carried out manually as these were not computerized in those days, this is the only one of which we know. To give an undertaking to honourable senators that there was no other case is beyond our province and this is the best estimation that we have.

Senator Godfrey: So you have made a diligent search and the only known case in Canada, whether in relation to ticket of leave or anything else, was this one case.

Mr. Hollies: That is so.

Senator Hastings: You did not ask about temporary absence.

Senator McIlraith: Mr. Chairman, may I follow that up by seeking information on how many convicted murderers were not hanged and were let out on ticket of leave in the period up until 1959?

Mr. Bouchard: I do not know whether this will answer your question. The number of persons paroled, whose death sentences were commuted to life imprisonment, between 1920 and 1975, is as follows. 184 were released on parole, 14 were revoked, and seven were forfeited.

Senator McIlraith: My point is that virtually there was none let out on ticket of leave during the 1930s and 1940s. The practice of paroling persons convicted of murder is a relatively new practice. If we had these figures of the 180 broken down by years, it would give us some information that might be helpful on the point which Senator Godfrey is trying to get at; because, in point of fact, the parole of these types of offenders has increased sharply in the last five years and, therefore, those persons now alive have been out a relatively short time. We have to have that kind of information before we can make full analytical use of the statistics.

Senator Godfrey: You talk about 181 being let out, as the total. You then go back to 1920, and the figure is 184. Is that correct?

Mr. Bouchard: That has been brought to my attention. I would suggest that the last figures I gave you, going back to 1920, should be switched around.

Senator McIlraith: Or ignored.

Mr. Hollies: I think they are completely inaccurate. Either they have the wrong time period or the wrong statistics.

Senator Godfrey: That could be so.

Mr. Hollies: The figures for revocation do not jibe.

The Chairman: I know that temporary absence was not within the jurisdiction of the Parole Board. Was murder committed by a convicted murderer or murderers out on temporary absence?

Mr. Bouchard: Yes. There was one person who committed two murders.

Senator Hastings: Who was that?

Mr. Bouchard: I do not know. All it says is that one person committed first and second murders in Canada.

The Chairman: While on temporary absence?

Mr. Bouchard: Yes.

Le sénateur Asselin: Avez-vous les chiffres des personnes qui se sont échappées de prison et qui ont commis des meurtres par la suite?

Mr. Bouchard: Oui, après évasion, deux personnes ont commis des meurtres.

Le président: Récemment?

Mr. Bouchard: Ce n'est pas indiqué ici, monsieur le président. Un a tué au Canada après s'être évadé du pénitencier en Colombie-Britannique, et il a commis aux États-Unis un deuxième et un troisième meurtres.

L'autre personne a commis son premier meurtre aux États-Unis. Il est venu au Canada et a tué un policier.

Mr. Hollies: There is a third case now on death row.

Le sénateur Asselin: Vous ne tenez pas compte de celui qui, à Montréal, au restaurant Gargantua, a tué neuf ou dix personnes. Il était dans une prison provinciale; je ne me souviens pas de son nom—oui, Richard Blass.

Mr. Bouchard: Il n'avait jamais été condamné pour meurtre.

While incarcerated, there was one person who committed a first and second murder in Canada.

Senator Godfrey: That is, of a prison guard, or someone else?

Mr. Bouchard: Yes, or another inmate.

Senator Hastings: Mr. Chairman, before we leave these statistics, if we stick with this figure of 181 which the board has released, there have been 11 forfeitures. I would be interested to know if those forfeitures involved violence of any kind to a person. I do not require that information now.

Mr. Bouchard: I think I have that information with me. I find that what I have is on the sheet dealing with the period from 1920 to 1975, which we said we would leave aside. I can obtain that information for you.

Senator Hastings: I think it is very important, in the light of the unfounded criticism that is being made against your board, that you have the records dealing with the 181. Of the men you have released, not one has committed murder again, and only 11 have forfeited their parole. I would like to know—I am going to say it; and I do not know whether or not it is true—whether it is correct that none was forfeited for violence to another person. You are

being maligned and misrepresented by everyone else. You had better get your records, and let us see them.

Senator Godfrey: That would include, roughly, 100 per cent of my friends, and that is a conservative estimate!

The Chairman: As honourable senators know, the committee cannot sit this afternoon because the Senate is

sitting. I do not think we have completed our examination of parole. I myself have some questions to ask. We will determine among ourselves when we will sit again. The committee is adjourned.

The committee adjourned.

APPENDIX "A"

NUMBER OF PAROLES GRANTED

<u>Year</u>	<u>No. of full paroles</u>	<u>No. of day paroles</u>
1969	1,959	47
1970	2,785	123
1971	2,462	336
1972	1,756	394
1973	1,236	749
1974	1,567	760
1975	1,277	820

APPENDIX "B"

CANADA INMATE POPULATION(FEDERAL PENITENTIARIES)

as of end of Year (31 December)

	<u>MALE</u>	<u>FEMALE</u>	<u>TOTAL</u>
1969	7,090	96	7,186
1970	7,068	93	7,161
1971	7,441	107	7,548
1972	8,233	128	8,361
1973	9,042	165	9,207
1974	8,467	149	8,616
1975	8,681	145	8,826

Present position as of March 16, 1976—8,832 MALE
149 FEMALE

APPENDIX "C"

NUMBER OF FORFEITURES AND REVOCATIONS
OF PAROLE

<u>Year</u>	<u>Forfeitures</u>	<u>Revocations</u>	<u>Total number of Cases under parole supervision</u>
1971	1,154	357	9,710
1972	1,041	442	8,910
1973	775	311	7,333
1974	491	233	7,097
1975	483	277	6,457

APPENDIX "D"

NUMBER OF FORFEITURES AND REVOCATIONS OF
MANDATORY SUPERVISION

<u>Year</u>	<u>Forfeitures</u>	<u>Revocations</u>	<u>Total number of cases under mandatory supervision</u>
1972	111	51	1,006
1973	301	204	2,270
1974	469	233	3,508
1975	642	341	4,048

APPENDIX "E"

PAROLES GRANTED TO PERSONS CONVICTED OF
MURDER

A. Number of persons convicted for non-capital murder released on parole between 1959 and March 31, 1975.

<u>Released on first parole</u>	<u>Violations</u>
93	20 (12 revoked, 8 forfeited)

<u>Released on second parole</u>	<u>Violations</u>	<u>Failure rate</u>
3	1	21%

B. Number of persons convicted of capital murder-death commuted between 1959 and March 31, 1975.

<u>Released on first parole</u>	<u>Violations</u>
76	10 (8 revoked, 2 forfeited)

<u>Released on second parole</u>	<u>Violations</u>
8	2 (1 revoked, 1 forfeited)

<u>Released on third parole</u>	<u>Violations</u>	<u>Failure rate</u>
1	—	14%

Total: 181

Published under authority of the Senate by the Queen's Printer for Canada

Available from Printing and Publishing, Supply and Services Canada, Ottawa, Canada K1A 0S9



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75-76

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 39

THURSDAY, APRIL 1, 1976

Fourth Proceedings on:

“The Subject matter of Bill C-83 intituled:
‘An Act for better protection of Canadian
society against perpetrators of violent and
other crime’.”

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Langlois
Buckwold	McGrand
Choquette	McIlraith
Croll	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Riel
Hastings	Robichaud
Hayden	Smith (<i>Colchester</i>)
Laird	Walker—(19)
Lang	

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, 4th March, 1976:

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Langlois:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the subject-matter of the Bill C-83, intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime", in advance of the said Bill coming before the Senate, or any matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, April 1, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 9:30 a.m., the Honourable Senator Goldenberg, presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Buckwold, Flynn, Godfrey, Hastings, Laird, Langlois, McGrand and Neiman. (10)

Present but not of the Committee: The Honourable Senators Cottreau and McElman. (2)

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its examination of the subject matter of Bill C-83 intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime".

The following witnesses, from the *Ministry of the Solicitor General*, were heard in explanation of the said subject matter:

Mr. Claude Bouchard, Vice-Chairman,
National Parole Board;

Mr. R. B. Macauley, Legal Adviser,
National Parole Board;

Mr. J. H. Hollies, Q.C.,
Departmental General Counsel;

Mr. W. A. J. Atack, Director,
Research and Planning,
National Parole Service;

Mr. André Charette, Executive Assistant to
the Commissioner of Penitentiaries,
Canadian Penitentiary Service.

The Honourable Senator Hastings served notice that at some later date he would move certain proposals for amendments to Bill C-83.

At 11:30 a.m. the Committee adjourned until Tuesday, April 6, 1976 at 10:30 a.m.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, April 1, 1976

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 9.30 a.m. to consider the subject matter of Bill C-83, for the better protection of Canadian society against perpetrators of violent and other crime.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, we continue this morning our study of Bill C-83, and we are still dealing with the amendments concerning parole. Senator Hastings?

Senator Hastings: We were at page 54, Mr. Chairman, and I still have not received a clear explanation as to why specific reference is made to Ontario and British Columbia. Why are paragraphs (a) and (b) included? Why don't we end just with the words "a parole board appointed pursuant to section 5.1". Why do we specifically name two when we know there will be others appointed?

The Chairman: But those are the only two existing provincial boards.

Senator Hastings: But since we are going to get more, why don't we say, "pursuant to any provincial parole board which may be appointed"?

Senator Laird: Is it related to some other sections? Is that why you have worded it that way?

Mr. Claude Bouchard, Vice-Chairman, National Parole Board: Mr. Chairman, I should like Mr. Hollies to answer that.

Mr. J. H. Hollies, Q.C., General Counsel, Ministry of the Solicitor General: Mr. Chairman, if the section were only aimed at parole boards appointed under section 5.1, then it would be necessary to reappoint the existing boards in British Columbia and Ontario for the purposes of this act, so it is just to make it quite clear that there is no necessity for British Columbia and Ontario to appoint a further board under section 5.1, that the boards already constituted there may continue to operate with the expanded powers.

Senator Hastings: But if in six months from now there is a board in Alberta, are we going to have to come back and amend this again?

Mr. Hollies: No.

Senator Hastings: Then moving on to clause 16, where you are increasing the number of board members to 26, how are you going to deploy 26 members?

Mr. Bouchard: Ten new members are now deployed in five regions across Canada. The additional seven members will also be deployed in the regions. One will be going to

British Columbia, two will be going to Quebec, two to Ontario and two in the Prairies.

Senator Hastings: And you will have a ten-member executive committee in Ottawa?

Mr. Bouchard: No, we have not yet made up the constitution as to where they would come from, but we are envisaging one executive member from each region. There would be a senior member in each region; five would be coming from the field and five would be in Ottawa.

Senator Hastings: Mr. Bouchard, am I right that the Parole Board originally started with seven members?

Mr. Bouchard: It started with four, senator; then a fifth was added; then it went to nine; and then it went to 19.

Senator Hastings: And now it is going to 29.

The Chairman: When you say it went from 9 to 19, you are including 10 ad hoc members?

Mr. Bouchard: Yes, but the provision in this act is doing away with that.

Senator Hastings: And we are still dealing primarily with 8,000 inmates, give or take 1,000. Does the increased number of board members increase the decision making or has it any bearing on the decision making?

Mr. Bouchard: Not on the decision making per se, but on the number of applications.

Senator Hastings: But you still have 8,000 inmates and have had the same number of inmates since 1970. You have increased the board membership, and I am asking you what effect does the increased number of members have on the decision making process? Has it resulted in better decisions?

Mr. Bouchard: We are getting faster decisions; the delays are considerably reduced. As you know, prior to 1970 all the decision making was made on paper, in Ottawa. After 1970 the board started travelling across the country and granting panel hearings. This has caused enormous delays, because the voting structure is such that some categories of inmates require two votes, others three, five, seven and nine.

Senator Hastings: In other words, the number of board members really has no bearing on the quality of the decisions.

Mr. Bouchard: It might, in the sense that they are under far less pressure than previously, because the work load can now be distributed.

Senator Hastings: But the forfeitures and revocations run pretty well even. Regardless of the number of board members, they seem to run the same.

Senator Laird: Senator Hastings has been kind enough to allow me to ask a supplementary. This is getting at the root of the matter. This increase would certainly, presumably, help to expedite the disposition of these cases. However, during a very extensive study of the parole system I recall distinctly that it appeared definite from examination of the witnesses, who were in the same category as you, Mr. Bouchard, that one of the stumbling blocks to speed was the lack of trained psychiatrists. Were the process to be speeded up in this manner, would it not run into a bottleneck if there were not sufficient trained psychiatrists to deal with these cases? Is that not even more important than increasing the number of board members?

Mr. Bouchard: As you know, sir, the board employs institutional psychiatrists and also psychiatrists from the outside. There are certainly delays in some areas when we cannot obtain the reports as quickly as the board would like. However, it has no bearing, basically, on the number of members appointed to the board. One of the reasons the board is requesting seven additional members is because it will be the ultimate releasing authority under the provisions of this legislation. All TAs will be coming under the board's jurisdiction, with part of them delegated again to the penitentiaries.

Senator Laird: But part of the whole process so often is dependent upon the report of the psychiatrist, is that not right?

Mr. Bouchard: That is true in a very small number of cases, when we consider the whole inmate population.

Senator Laird: Apparently, as I understood the evidence adduced when we were carrying out the intensive study, the psychiatrist's report was just vital in dealing with the matter of parole.

Mr. Bouchard: It is vital when dealing with murderers and dangerous sexual offenders, and in a number of other cases. However, on the whole, when the board's operations throughout a year are taken into consideration, it is very minor.

Senator Laird: It is?

Mr. Bouchard: Yes.

Senator Laird: Would you have any figures

Mr. Bouchard: No, I am afraid not.

Senator Hastings: We found in our study that the dangerous sexual offender and the habitual criminal, although Parliament provided for review every year, by the time all the reports were in, were getting evaluation about every two years because you were never ready. I am not criticizing, but you were never ready in the year, which meant the inmate got a review only every two years. You were simply unprepared to give him his review in the due year, as Parliament had intended. It concerns me that under the new dangerous offender provisions we will be back in the same boat. Whereas it should be two years, they will be getting it every three or four years.

Mr. Bouchard: No, I believe there was a psychological factor in connection with that, whereby Parliament forced the board, through legislation, to review these cases year by year. It meant that the board had to obtain psychiatric reports every year and very often the institutional psychiatrists felt that there was nothing new to add to the previous report. The board, in some instances, would not

accept this argument and would endeavour to obtain a further and more complete report, which would result in hassles between the board and the psychiatrists.

Senator Hastings: So the inmates were not getting their reviews every year, but every two years, whenever the reports were received.

Mr. Bouchard: In all cases they were getting a review on paper, although not a panel hearing.

Senator Hastings: They get reviews on paper; do they get a personal interview? I asked you that last time, and I ask again.

Mr. Bouchard: In most cases they did, yes.

Senator Hastings: In most cases they got personal interviews from the board, but a decision on paper?

Mr. Bouchard: That is correct.

Senator Hastings: The ten ad hoc members were added to the board. Can you give us your experience as a result of the operation of the regional boards?

Mr. Bouchard: Yes, sir. First, it makes the board very much more visible. Secondly, it also gives the inmate the feeling that he has a fair chance to submit his case to the board. Thirdly, it speeds the process up.

Senator Hastings: Was that not always the case?

Mr. Bouchard: It was, up to a point, but when there were seven or eight board members chasing from Halifax to Vancouver some of the hearings were quite rapid as compared to the present situation.

Senator Hastings: I didn't quite hear the deployment which is intended if the proposed 26 members are approved. Will ten be in Ottawa?

Mr. Bouchard: No, nine will remain in Ottawa for the time being, as the situation exists. We now have ten in the regions, and the additional seven members will also go to the regions.

Senator Hastings: They will all be deployed in the regions. You said that if this legislation is enacted the board will undertake releases under temporary absence. You do not envisage, surely, the board reviewing every application for temporary absence?

Mr. Bouchard: No, sir; in all those cases which do not involve violence, or indicate no violence in the past record, this authority will be delegated back to the penitentiaries.

Senator Hastings: Even in the case of a murderer, or violent offender, will the board do every one, or only the first?

Mr. Bouchard: We will do the first.

Senator Hastings: And, depending on the conduct on TA, you will delegate the authority, so you are not really going to do all the TAs.

Mr. Bouchard: No. The board is presently working on the regulations of the TA.

Senator Hastings: Then, why do you need ten more members?

Mr. Bouchard: Actually, we need seven more members.

Senator Hastings: Yes, seven.

Mr. Bouchard: Allow me to give you one example, the Prairies. If we consider just the travelling involved and the number of cases, it is just incredible.

Senator Hastings: I agree with you.

Mr. Bouchard: You know the area. At present in Quebec, for instance, the members are taking up to 400 decisions per month.

Senator Hastings: Three men are taking 400 decisions?

Mr. Bouchard: Two men. Mind you, many of those decisions are not necessarily release decisions, but they still have to open the file and vote.

Senator Hastings: And interview 2,000 men?

Mr. Bouchard: No, they interview approximately 140 in a month.

Senator Hastings: Why are they not interviewing all the applicants?

Mr. Bouchard: They are interviewing the applicants but there are many administrative decisions which must be made on file between interviews.

Senator Hastings: This is in relation to the increased number of boards. What was the number of personnel of the Parole Service in 1970 and in 1975?

Mr. Bouchard: Do you have those figures, Mr. Attack?

Mr. J. Attack, Director of Research and Planning, National Parole Service: I am afraid I do not have them for 1970.

Senator Hastings: We do not need an accurate figure now. How much has it increased over the five years? You must have an idea.

Mr. Attack: It has about doubled, I believe, roughly. If you are starting just before the Parole Board started releasing larger numbers of inmates until the present time, it has doubled, or better.

Senator Hastings: The Parole Board has not released larger numbers of inmates; the number has decreased.

Mr. Attack: No; before 1970 the releases were fairly small in number, but this is since 1970.

Senator Hastings: I suggest to you that it is because of the fact that 4,000 men are under mandatory supervision that the increase is needed.

Mr. Bouchard: That is part of it.

Senator Hastings: In 1970 you had 9,000 men under supervision; today you have 10,000 men under supervision, six under parole and four under mandatory supervision, so your increase in staff over these years has been due immeasurably to these 4,000 under mandatory supervision.

Mr. Bouchard: That is part of it.

Senator Hastings: Not part of it; I think it is all of it.

Mr. Bouchard: Not necessarily, because the quality of supervision over the years has also been increased.

Senator Hastings: But you had 9,000 men under supervision in 1970; you have doubled your staff, and you now have only 6,000 men under supervision.

Mr. Bouchard: I realize that.

Senator Hastings: But you have 4,000 men under mandatory supervision, and that is causing you all this trouble—and not only causing you trouble with respect to supervision, but is literally ruining the reputation of parole.

Mr. Bouchard: There is no doubt that they are a very difficult class of inmate to supervise.

Senator Hastings: So why are we wasting our time supervising them?

Mr. Bouchard: I appreciate your concern, but the board still feels that they are probably the people who need supervision most, although they are very difficult cases when they hit the streets. They are the people from whom we are trying to protect society, basically.

Senator Hastings: But you are not a police force.

Mr. Bouchard: We realize that.

Senator Hastings: But that is what you are making it into. The point I am making is that you would protect society much better if you dealt with the 6,000 whom you have decided to make better citizens, who have made behavioural change, however slight. If you brought pressure to bear on those 6,000 whom you have already made a decision on, instead of wasting your efforts and resources on the 4,000 whom you decided were not going to change, it would be much better. What happened to them? Did they get hit by the hand of God? Did you decide, all of a sudden, that you were going to supervise them? Mr. Bouchard, you will never, never mandatory supervise a man into virtuous conduct.

Senator Buckwold: What are you going to do with them? Could Senator Hastings answer that question. What are you going to do with them? Are you going to put them on the street and forget about them?

Senator Hastings: Certainly. Under the law he has served his time. When a man has served his time for an offence for which he was committed, he is allowed to go free.

Senator Buckwold: But is he not on parole?

Senator Hastings: No. We have put him under parole. That is why we are wasting our time with him.

Mr. Bouchard: You must realize that if they get out of line or they appear to be dangerous, they are subjected to revocation and forfeiture like any other parolee.

Senator Hastings: Granted. In my own city, Philippe Gagnon was under your supervision and there was a danger, but it did not do us much good. You do not supervise a dangerous offender. You do not sleep with him and look after him 24 hours a day. This is what is ruining the reputation of your parole—these men who are committing these offences. The press do not distinguish between mandatory supervision and parole, nor do the public, and it is ruining the reputation of the 6,000 with whom we should be working. We should be trying to increase that number. I was asked, "What should we do with them?" A man has

served his sentence according to law. He should be free to go, and we will hear from him—just as we hear from anyone else.

Senator Langlois: What about society?

Senator Neiman: I think that job should be put back in the hands of the police. We know that the police follow up a certain number of dangerous offenders when they are released from prison; we know that they keep track of them. I agree with Senator Hastings. That would be a better way of allowing it to be done.

Mr. Bouchard: This was the law, as you know, prior to 1970. This came out of the Ouimet report.

Senator Langlois: Do you feel that your supervision is serving a useful purpose, that it is doing a good enough job?

Mr. Bouchard: I would think so. There is no doubt that it has created a number of problems for the board, in terms of the board getting bad press, because the press, and media generally, do not distinguish between mandatory supervision, penitentiary leave, parole, probation, and so on.

Senator Langlois: Do you think the police force could do a better job than you are doing in this respect?

Mr. Bouchard: I do not think the police force would have the manpower to do this type of supervision.

Senator Neiman: But you don't, Mr. Bouchard.

Senator Hastings: You are not a police force.

Senator Neiman: It is impossible for your staff to look after 4,000 men, under the circumstances.

Mr. Bouchard: Under the present legislation, tied to peace and security, the Parole Service—perhaps I should let the penitentiary people speak on this, since it is in their shop—has gone to Treasury Board and has managed to get a number of man-years in order to be able to implement very strict supervision of these people.

Senator Godfrey: Mr. Chairman, may I ask a question? I have had my hand up for some time.

The Chairman: Senator Godfrey, I have Senator Asselin, Senator McGrand and Senator Godfrey—in that order. Some of the questions which have been asked have been supplementaries. Senator Asselin may go ahead.

[Translation]

Senator Asselin: What I would like to know is this: all the prisoners who come out of jail, who are going to serve their sentence, are they necessarily under the supervision of your Board?

Mr. Bouchard: Yes, all the inmates who are not serving a sentence which would end now and would have begun in 1970, before the act comes into force.

Senator Asselin: But is it automatic?

Mr. Bouchard: Yes, it is. It is the part of the statutory remission to which the earned remission which is served in the street is added, but this under the supervision of the National Parole Board.

[Text]

Senator Asselin: If you were told that a man who was released was not a dangerous person, would you, at the same time, look after him, supervise him?

Mr. Bouchard: If he were dangerous?

Senator Asselin: If he were not dangerous.

Mr. Bouchard: We would still supervise, because we are bound by legislation to do so. On the other hand, one of the advantages is that if, for instance, one of the inmates has a serious drinking problem and is seen drinking at 3 o'clock on Yonge Street, and we know he is going to commit an offence, the police cannot pick him up and hold him, while the board can revoke him and send him back to prison.

[Translation]

Senator Asselin: Another question, when the applicants appear before the board to present their case, are they always accompanied by a lawyer?

Mr. Bouchard: Never.

Senator Asselin: They never have a lawyer. Why?

Mr. Bouchard: Because first of all, we are not a tribunal as this is currently understood, and that the trial has taken place. Therefore, the Board just tries to assess the degree of rehabilitation, of improvement, and the degree of danger they represent for the community.

Senator Asselin: Is it not true that in many cases, those applicants do not receive the right treatment, precisely because they cannot defend orally and adequately before your Board the case they are presenting to you? I am asking this question, because I personally have experience in this respect.

Mr. Bouchard: It may happen in some cases, but in general my answer would be negative again, because the inmate, when he appears before the Board is always accompanied by a classification officer who is responsible for him and who defends his interest. There is also a national parole service officer who has prepared the case, and who has interviewed the individual before he appears before the Board.

The Chairman: Senator Asselin, the bill which is before us, in section 23, provides for regulations.

Senator Asselin: On what page?

The Chairman: On page 59, the Governor in Council may make regulations,

prescribing the circumstances in which an inmate is to be entitled to assistance at a hearing before the Board, the kind and extent of such assistance and the persons or class of persons who may provide the assistance;

Senator Asselin: I asked this question because I have had the experience of it in the past. I think it would be an excellent idea that this Committee should recommend the introduction into the regulation which the Government will enact, of this important provision requiring that the individual who appears before the Board, in order to protect his rights better, should have the assistance of a lawyer to explain his application, and to obtain justice as much as possible. Obviously, I do not say justice is not done.

[Text]

In many cases, the inmate applying for release should have the assistance of legal counsel in putting forth his case for parole. It seems to me that part of our recommendation should be that any inmate making application for parole should have the assistance of legal counsel.

The Chairman: This committee considered that in connection with its report on parole, at which time it was the decision of the committee to recommend that the applicant have assistance, but not that of a lawyer. Subject to the memory of other members of the committee, it was the view that the tendency, if a lawyer were involved, would be to have the whole case re-opened, whereas an application for parole does not involve the re-opening of the whole case. In any event, I point out that our recommendation has, in part, been adopted in clause 23.

[Translation]

Do you have any other questions.

Senator Asselin: I will come back to that later, Mr. Chairman.

[Text]

The Chairman: Senator McGrand.

Senator McGrand: Mr. Chairman, I wish to address my question to Senator Hastings.

Senator Hastings: I am not a witness.

Senator McGrand: There is no one in this room who has more interest in, or greater knowledge of, this problem than has Senator Hastings, and I am very much influenced by what he thinks.

Senator Laird: D'accord.

Senator McGrand: As I understand Senator Hastings' view, he would waste no time on the 4,000 who are realised on mandatory supervision but would concentrate on the 6,000 parolees with whom something can be done.

What do you propose we do with the 4,000 who are on mandatory supervision? We cannot just take the position that because they have served their time they can simply be turned loose.

Senator Hastings: Having served the sentence for which they were convicted, having earned remission, they are entitled to be at large, the same as any other Canadian citizen.

Senator McGrand: In theory, yes.

Senator Hastings: There is help available for those individuals, if they wish to take advantage of it—and the only type of help that is of any value to an individual is that which is wanted. On that basis, they will either make it or not make it. All the police supervision, parole supervision, in the world is not going to save someone who does not want to be saved. It is as simple as that.

Senator Buckwold: I agree that remission is something to which the inmate is legally entitled. Nevertheless, society feels that the sentence is still not completely served and, for that reason, mandatory supervision is essential during the period of earned remission.

I think that the very pressure that created this regulation would, if it were removed, force its re-introduction in short order, because with it there is at least some supervision.

I take issue with Senator Hastings' statement in that regard, in the sense that although it is generally very difficult to handle these people, there is, nevertheless, some value in mandatory supervision.

Perhaps the witness could indicate whether there is at least some success as a result of the mandatory supervision program. Surely, some progress is made under the mandatory supervision program?

Mr. Bouchard: We do have some success, yes. The board feels that it is quite selective in granting parole in ordinary cases. It is therefore of the view that if only the better risks are chosen for release on parole, there is no longer the requirement for the strict supervision accorded those who are released on mandatory supervision.

I appreciate Senator Hastings' concern, because it has created a great deal of concern and a good many problems for the board.

Mr. Hollies: With your permission, Mr. Chairman, I should like to supplement what Mr. Bouchard has said. Senator Hastings spoke of the inmate having served his sentence being entitled to be released. While I appreciate the force of that observation, senator, I would point out that the individual on parole who has so conducted himself as to warrant a chance in the community is at risk of being re-incarcerated at any time until the warrant expiry date. In other words, his statutory and earned remission is not something to which he is automatically entitled for all time. If he fouls up on parole, he may forfeit or the board may revoke his parole, in which event he is returned to prison, and this can happen at any time before the warrant expiry date.

Comparing that to the case of the individual who has been a disciplinary problem, who has given no sign of reformation, no sign of rehabilitation—if that is still not a dirty word—who goes out on mandatory supervision if he is not subject to revocation, which must mean the continuation of mandatory supervision, he is in a preferred position to the individual who has been released on parole.

This is a major question of policy, so far as we are concerned, that has been settled by both houses of Parliament. I do not know whether we can legitimately say whether the policy in that regard should be changed and mandatory supervision abolished, or the Parole Board no longer being required to exercise any function in connection with mandatory parole. With respect, I would suggest that probably that is a question that might better be addressed to the appropriate ministers, who can speak for the executive arm of the government.

Senator Hastings: That is why we are studying the bill.

Mr. Hollies: I am merely saying that, as public servants, we are in a difficult position in trying to answer for our masters in both houses of Parliament as to what the law should be.

Senator Laird: This has not been approved by Parliament, Mr. Hollies. We are part of Parliament and we are not necessarily approving it. We may very well decide that it should be changed.

Mr. Hollies: Quite, senator. My point was that it is now the law that there is mandatory supervision, and we are being asked whether the policy of the government, as expressed by both houses of Parliament in legislation, should not now be changed.

Senator Buckwold: I wonder if I might ask a supplementary on this, Mr. Chairman.

The Chairman: Certainly.

Senator Buckwold: Clause 27 of the bill provides that the mandatory supervision will apply where remission exceeds 60 days. In the case where the earned remission amounts to 120 days, does mandatory supervision then end when it reaches 60 days?

Mr. Hollies: No, senator. The 60-day limit is applicable to determine whether mandatory supervision should commence in the first instance. If a man is released from penitentiary with less than 60 days' earned remission, it is not considered worthwhile having mandatory supervision.

Senator Buckwold: If it is a longer period than 60 days, mandatory supervision would continue right to the end of the actual sentence?

Mr. Hollies: Yes, senator. The earned remission standing to his credit is not diminished as time elapses.

Senator Buckwold: One of the recommendations of this committee on parole was that the workload of the National Parole Board be reduced by transferring authority to the various provincial governments in respect of parole involving inmates of provincial institutions.

To my personal surprise at that time, I was not aware that the National Parole Board also heard applications for parole on behalf of those in provincial institutions. Has anything been done in that regard? Do you have any comments on that? It seems to me it was a reasonably important recommendation in the sense that people in the provincial institutions are not generally dangerous offenders, and that it would relieve the national board of a good deal.

Mr. Hollies: With respect, I think you will find that is covered on page 57, the new section 5.1, introduced by clause 20 of the bill. This does not mean provinces are automatically vested with that authority; it is only if they desire to exercise it. It was to this end that discussions took place with all provinces before the introduction of this legislation.

Senator Buckwold: In other words, that has been met?

Mr. Hollies: Yes, sir.

Senator Buckwold: I was not aware of that. Thank you.

The Chairman: Are there any further questions on parole?

Senator Hastings: On page 55, in line 5 we see:

On the recommendation of the Chairman, the Governor in Council may designate not more than ten members of the Board to be an executive committee.

Why is it the chairman? Elsewhere you refer to the Solicitor General making a recommendation to the Governor in Council. Why in this instance does the chairman make the recommendation?

Mr. Bouchard: I think the feeling was that, since the executive committee would become the policy-making body, the chairman should have an opportunity to make recommendations about whom he felt he could work with better as a group.

Senator Hastings: In all other cases he does that through the Solicitor General. Why does he not do it that way here? I am not a lawyer. Do chairmen make recommendations to the Governor in Council? Is it not the responsibility of a minister to make recommendations to the Governor in Council?

Mr. Bouchard: Basically that is probably the intention, because when they say "Governor in Council" it always goes through the minister first, who submits it to the Governor in Council.

Senator Hastings: Then should it not say, "On the recommendation of the Solicitor General"? In all other places you say that the Solicitor General may make recommendations. I wondered why you decided here that the chairman should make recommendations to the Governor in Council.

Mr. Hollies: The point is well taken so far as the process through the Solicitor General is concerned. I suggest this is a parallel, in part, to the present subsection (6) of section 6 of the act, where it says that the board may, with the approval of the Governor in Council, make rules for the conduct of its proceedings. Those rules are in fact funnelled through the Solicitor General. If you said solely "on the recommendation of the Solicitor General the Governor in Council may designate," you would take out of the act the prerequisite that the concurrence of the chairman, and indeed the recommendation of the chairman, must first be obtained. It is a little difficult to express, but you will recall that the Parole Act does not make the Parole Board subject to the direction and control of the Solicitor General; it varies in this respect from the Penitentiaries Act and the RCMP Act.

It is my understanding that this has been deliberately left out of the act so as to preserve not only the reality of independence but the appearance of independence. What we are talking about here is an internal policy-making body for the National Parole Board, and I submit it is proper in that case to say, "On the recommendation of the chairman." To deal with a purely hypothetical case, if there were a bloody-minded Solicitor General he could say, "Only those members of the Parole Board who will give effect to the policies I want to have will be on the executive committee." As I say, that is purely hypothetical and perhaps far out in left field. Nevertheless, I do think it important that the recommendation of the chairman be there as a prerequisite, bearing in mind that the minister is still acting in his political capacity and that he must lay the matter before the Governor in Council.

Senator Hastings: Mr. Hollies, you are not being very consistent. In clause 17 it says:

... the Solicitor General may, on the recommendation of the Chairman of the Board, designate representatives of the police forces.

Why does the chairman not do that? Why does it go backwards there to the Solicitor General?

Mr. Hollies: Again it is on the recommendation of the chairman of the board, which is a prerequisite. I agree with

you that it is not consistent, and I am completely taken aback.

Senator Hastings: I am trying to make it consistent.

Mr. Hollies: Yes, sir, I have no counter to that at all.

Senator Hastings: I would recommend an amendment to that clause to read:

On the recommendation of the Chairman of the Board, the Solicitor General may make a recommendation to the Governor in Council.

Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel: If I might interject here, I think this is understood. It is not necessary in every case, where an act authorizes the Governor in Council to do something, to say that it shall be on the recommendation of the appropriate minister. This happens anyway, and it is redundant to say that in legislation. I believe this has been eliminated in other acts. In this case, the recommendation of the chairman would be referred to the Solicitor General who would in turn submit it to the Governor in Council.

Senator Laird: Mechanically there is no way it can be avoided.

Mr. du Plessis: That is right.

Senator Laird: The chairman cannot deal directly; he has to go through a cabinet minister. Since mechanically it has to be done that way, no matter how you try, I am wondering whether it is really all that important.

Senator Hastings: I am not a lawyer. I will give way to the legal minds. Perhaps the chairman could assist.

Senator Laird: Mr. Chairman, do you think that mechanically there is no way of avoiding doing it through the Solicitor General?

The Chairman: I don't know.

Senator Laird: You are too humble, Mr. Chairman.

Senator Hastings: Why are you not consistent?

Senator Laird: As a matter of semantics it does not make sense, but mechanically it has to work that way, as I see it.

Mr. du Plessis: In clause 17 it says that it is the Solicitor General who will be designating representatives to regional panels. This will not be a Governor-in-Council decision. Therefore, there is no inconsistency; it is just a different level of authority, or a different authorization for the appointment.

The Chairman: Does it really bother you very much, Senator Hastings?

Senator Hastings: I am not a lawyer. I try to understand these things. I do not want the chairman of the board reporting to the Governor in Council.

Mr. du Plessis: This will not happen, I can assure you. It cannot happen.

Senator Hastings: Perhaps we could move to the appointing of this authority given to the Solicitor General to designate representatives of police forces for regional panels from the community to deal with dangerous offenders, and so on.

What is envisaged here?

Mr. Bouchard: This is in order for the community to have direct input into the decision to release murderers or people serving indeterminate or indefinite sentences.

Senator Hastings: Will the decision of the community board created out in British Columbia be a final decision?

Mr. Bouchard: No. In the cases of these categories of people the board requires nine votes in order to release them. This would mean that in a region, if there were two regional board members interviewing the person and then casting their votes, their votes would be accompanied by the votes of two community members. You would then have four votes in the region, after which the file would be sent to Ottawa for further consideration and votes to be applied to it.

Senator Hastings: So there would be five people in New Brunswick or British Columbia, for example, who would hear the initial application.

Mr. Bouchard: Four or five, senator, depending on what the set-up is.

Senator Hastings: You propose to have two people from the community sit on this board. They could not in themselves grant the parole.

Mr. Bouchard: Definitely not.

Senator Hastings: And this covers parole, day parole, unescorted temporary absence of an inmate for life, that is, a murderer whose death sentence has been commuted, or an inmate in a penitentiary sentenced to an indeterminate period. At any rate, the answer to how large the regional board will be is that it will consist of four or five members, and the fact is that their decision will be reviewed by the nine-member board in Ottawa.

Mr. Bouchard: More votes would be added.

Senator Hastings: With respect to temporary absence, only the first instance would be reviewed. The board would not review every case.

Mr. Bouchard: No, only the first instance.

Senator Hastings: And then you would give this authority to the director of the institution.

Mr. Bouchard: Yes, or leave it with the board, because it is regional, so that there is no delay involved.

[Translation]

Senator Asselin: Do you have any statistics on the number of inmates who obtained temporary absences, who are charged with violent crimes, and who did not return to prison?

Mr. Bouchard: Mr. Chairman, I would ask the representative of the Canadian Penitentiary Service, Mr. Charette, to answer this question, please.

Mr. André Charette, Administrative Assistant to the Commissioner of Penitentiaries: Mr. Chairman, Honourable Senators, we do not have any statistics on the number of inmates who were granted temporary absences and who did not return to prison and who are violent. However, I can tell you with regard to inmates who were given temporary absences and who did not return, that the rate of

success is around 99 per cent and over, for the past three years; it varies between 99.2 and 99.5 per cent.

Although I do not have the exact figures here for the past year, I know that over 99 per cent of inmates who were given a temporary absence returned on schedule.

Senator Asselin: Among those who did not return, how many committed crimes?

Mr. Charette: In 1974, I can give you figures which are even more recent, in 1975 . . .

Senator Asselin: You can give them in English, if you wish, for the benefit of the other senators.

[Text]

Mr. Charette: In the temporary absence program in 1975—and these are unescorted temporary absences only—there were 19,122 TAs, or temporary absences, given. Sixty-five failed to return and five crimes were committed by inmates on TAs.

Senator Asselin: What kind of crimes? Was murder committed?

Mr. Charette: We do not have that information available here, but I cannot remember any murders being committed out of those five; but we can get that information for you, if you wish.

Senator Asselin: Thank you.

[Translation]

The Chairman: Are there any other questions?

Senator Asselin: Yes, Mr. Chairman. When an inmate does not return within the time limit granted to him, is it the Canadian Penitentiary Service which will try to find him or is it reported to the National Parole Board?

Mr. Charette: This is reported to the constabulary forces, to the police. I would like to check this, but I think they wait a few hours before notifying the police, because it may be due to a late bus or train. However, when they feel the person has no valid reason not to be back, then, the constabulary forces are notified.

[Text]

Mr. Bouchard: I should like to add that the National Parole Service is now planning on supervising people going out on temporary absences. Anyone who will be out for a period of over 24 hours will have to report at least once to a parole officer.

Senator Hastings: That would be the extent of the supervision?

Mr. Bouchard: Under the existing practice there was no supervision whatsoever.

Senator Hastings: Well, at times they had to report to the police.

Mr. Bouchard: Yes, if they went from one location to another they would have to report.

Senator Hastings: There have been occasions when I have taken them to report to the police. It was part of their TA to report to the police in the city in which they were temporarily absent.

When a parolee does not return on time he becomes unlawfully at large and a warrant is issued for his arrest. How many men were unlawfully at large as of December 31 last?

Mr. Charette: The difficulty is finding that particular information in the mass of information we have, senator. If you have other questions perhaps I could come back with your answer in a minute.

Senator Hastings: Fine. Of the 19,122 temporary absences, how many were issued to convicted murderers in 1975?

Mr. Charette: I could find that information for you in a minute or two, senator.

Senator Hastings: Thank you. Under clause 19 it says:

5. (1) The Chairman may establish divisions of the Board, each consisting of one or more members of the Board, and may direct any such division to carry out . . .

the work.

What do you envisage a one-man board doing?

Mr. Bouchard: For instance, suspension, senator. There are several duties that can be carried out by one member in terms even of decision-making. Suspension is one of them. As it stood in the past, you needed two members to suspend parole, even in an emergency case.

Senator Hastings: I am just wondering if it should be a division of the board. Is it not the function of the board?

Mr. Bouchard: It is a question of the duties or responsibilities that can be performed, not by individual board members, but by divisions of the board. For instance, on the panel as it stands now, and as the practice stands now, we are required to sit in pairs. It may be that in a number of day parole cases, for instance, in the future, for light types of offences, we might only need one member to be able to make that decision.

Mr. Charette: Senator Hastings, I now have the answer to your question. I regret that I do not have the statistics from 1975, but I do have them from 1974. A total of 275 individual murderers were released on 2,703 temporary absences. Two inmates were late returning from TA.

Senator Laird: They are the best parole risk.

Senator Hastings: Yet we take a whack at them every time.

Senator Neiman: Is it not proposed under this new legislation for murderers to create a different category? They are not going to be subject to the same parole provisions as those people who are now in prison.

Mr. Bouchard: You are right, senator.

Senator Neiman: And that creates a rather serious anomaly, in some senses, in trying to reconcile these changes in our proposed legislation.

Mr. Bouchard: You are quite right. I do not know what to say on this, except that for anyone serving life, with a minimum of 25 years, he would not be eligible for TA, or day parole, for a period of 22 years. If it is 10 years, then it would be seven years. If it is 15 years, it would be 12.

Senator Hastings: I do not know whether we are going to deal with that section now.

Senator Neiman: No. It is just that when I look at this, it reminds me of what we are thinking of doing under the other act.

Senator Laird: The other act that we have to face yet.

Senator Neiman: Yes.

Mr. Charette: Senator Hastings and Mr. Chairman, if I may give statistics on people still at large, the total as of December 31, 1975, was 191. Seventy-two of those were during 1975. The other 120 odd had escaped previously, or were at large previously to 1975 and still have not been recaptured.

Senator Hastings: They are doing pretty well. They are fitting into society fairly well.

Mr. Charette: As I am sure you are aware, senator, the escape rate has dropped dramatically over the last four years.

Senator Hastings: I was not dealing with escapes. I was dealing with cases of being unlawfully at large.

I do not know who can answer this next question. What about inmates confined to federal penitentiaries under a lieutenant governor's warrant?

Mr. Hollies: We have very few, senator.

Senator Hastings: I know you have only a few.

Mr. Hollies: Nevertheless, notwithstanding that we only have a few, they are a real problem. We have no option but to accept them under a lieutenant governor's warrant. They are kept there, as I understand it, subject to what Commissioner Westlake may say, and are dealt with, in the same fashion as any other prisoner. They can only be moved, of course, by means of a warrant, again, from the lieutenant governor. Normally the orders we have seen are for the removal of the man from a mental institution, or a place of incarceration in the province, to a specific penitentiary, there to be kept until further orders from the lieutenant governor.

I have been asked about this before, and I have said that to transfer him to a minimum security institution, or to another maximum security institution, is not within the competence of the Penitentiary Service. We have to go back and get directions from the lieutenant governor. I do not know if I have answered your question, senator. Is there something else you would like to know about the manner of dealing with them?

Senator Hastings: I think it is a very strange anomaly that people who are found not guilty and who are not in need of psychiatric treatment end up in penitentiaries.

Mr. Hollies: Yes, sir.

Senator Hastings: And the Parole Board have no jurisdiction in these cases?

Mr. Hollies: No, sir; nor, indeed, have the penitentiary authorities, as to where such a person is to be kept or as to when he is going to be released, because as you know this is purely, under the Code, a matter for decision by the lieutenant governor of the province acting as a federal agent.

Senator Hastings: So they sit in penitentiaries and rot.

Mr. Hollies: I do not know whether that is the actual experience or not. In the only case of which I am aware personally, because I actually sat on his trial before a court martial, the man remained in Stony Mountain Penitentiary for a number of years and then was released. I think he was there about five or six years.

Senator Laird: What was the basis for the lieutenant governor's warrant?

Mr. Hollies: In this case there were three charges of capital murder. The man was found guilty, originally, of non-capital murder in respect of all three. He was tried again and found not guilty by reason of insanity. The first trial was quashed because I made a mistake. I said "may" instead of "shall" in the course of a six-hour summing up.

Senator Laird: But is it not normal to send prisoners under those circumstances to mental institutions, such as the one up at Penetanguishene?

Mr. Hollies: Yes, sir. What happened in this particular case—and please bear in mind that I am speaking of only one particular case, so that I should not be generalizing on the basis of it, but I am doing the best I can—was that the man was put into an institution in Manitoba. They are sort of hamstrung in Manitoba anyway, as I understand it, as to proper custodial facilities, but it was decided by the provincial psychiatrists in Manitoba that there was no meaningful treatment available through provincial resources, that would benefit the man. That is the footing upon which the lieutenant governor acted. He said, "In that case, having regard to the offences alleged against the man in the first place, we will have to put him in a penitentiary," and that is what happened.

Now, Senator Hastings, you have suggested that such people simply stay there and rot. This may be an accurate description; I do not know. It is a usual dilemma that we are faced with in the case of even those who are committed to a penitentiary in the first place, but who are psychotic or otherwise not amenable to treatment.

I would like to digress for a moment here to say that it is a real problem, as I understand it—although my seniors in the Penitentiary Service can speak to that more authoritatively than I—as to what they are going to do with a psychotic man who is under sentence. It is the same sort of problem.

Senator Hastings: In a case I know of personally the man was found not guilty because of insanity. He was referred to a mental home and found to be not in need of psychiatric treatment. They did not know what to do with him, so they shipped him to the Prince Albert penitentiary. I do not know how we manage to put men who are not guilty into penitentiaries and who at the same time are not in need of psychiatric treatment, and keep them there for eight years. I suppose we could not send them to the Matsqui medical centre.

Mr. Hollies: No, sir. The lieutenant governor, however, could send him to Matsqui.

Senator Hastings: Out of the province?

Mr. Hollies: Yes, sir.

Senator Hastings: I see. Now, after eight years, we do in fact have a mental patient on our hands, and this is what we have done over the course of that period.

Mr. Hollies: I cannot understand, with all due respect to the provincial authorities, why, if he is not in need of psychiatric treatment and has been found not guilty by reason of insanity, the board, on reviewing his case, does not recommend his release, and why he has not in fact been released by the lieutenant governor. This, I know, is outside my jurisdiction, but I do not understand the reasoning behind the action.

Senator Hastings: This is why we have a National Parole Board, isn't it—because local boards do not always act in fairness?

Mr. Hollies: Yes; and of course, the Parole Board cannot touch this sort of thing.

Senator Hastings: One of the advantages of having a national parole board is that it is not influenced by local conditions and local circumstances.

Senator Laird: Public pressure is really quite important in these cases, is it not? I can think of cases where someone has been released and there has been a terrific public outcry.

Senator Hastings: On page 57, clause 5.1, you say that provincial parole boards may exercise parole jurisdiction except for the usual categories, murderers and those serving indeterminate sentences. Do you foresee these people being in provincial institutions?

Mr. Bouchard: No, except that there have been federal-provincial agreements whereby federal inmates, or otherwise, are transferred and vice versa, and up to now this has excluded murderers and that category of people. However, we have made an exception to that policy and we do have a murderer who reports to the Trois Rivières jail right now—I believe it is one night in every 15 days—because it saves a great deal of hardship involved in travelling and so on.

Senator Hastings: Is he on day parole?

Mr. Bouchard: Yes. So instead of having to return to Cowansville penitentiary, which is right in the middle of the fields, in the sticks, he is allowed to sleep in the Trois Rivières jail and then pursue whatever he is doing.

Senator Hastings: So, legally, he is an inmate of the Trois Rivières jail, a provincial jail.

Mr. Bouchard: Yes.

Senator Hastings: So you would have these categories in provincial institutions.

Mr. Bouchard: In very rare cases.

Senator Hastings: But you would still maintain authority with respect to parole or release.

Mr. Bouchard: Yes.

Senator Hastings: Not the provincial parole board?

Mr. Bouchard: No.

Senator Hastings: Now could you explain clause 22 with respect to immigration? Have you entered into any foreign agreements with respect to parole supervision in foreign countries?

Mr. Bouchard: This is now under discussion with the Americans, and it was discussed in Geneva. There were a few meetings held there during the United Nations Confer-

ence last June. Nothing formal has yet evolved, but they are still meeting and discussions are being held.

The Chairman: This was one of the recommendations of our committee.

Senator Hastings: I understand you released one man to a foreign country. How did you do that?

Mr. Bouchard: We can do that through informal agreements, right now, if the Americans will co-operate in a particular state. We write to them and make arrangements and they take over the supervision and continue it as a matter of courtesy as opposed to by way of formal agreement at this stage.

Senator Hastings: And then, going further, we come to the prescribing of these regulations under section 9, and it disturbs me because you are going to make regulations that we are not going to know anything about. I am referring now to clause 23. It disturbs me because I have read a public announcement, by somebody or other, that they are going to withdraw parole by exception. That was the cause of great discussion in our Senate committee, and it was our view that that should have remained with you, because no matter how well we draft a law and no matter how well we study these laws, there will always be cases that will not be covered, and if we pass this law the government will be able to pass regulations that we are not going to see.

Mr. Bouchard: That is correct. As far as parole by exception is concerned, we have instructions from cabinet that it will have to be in the regulations and that power will be taken away from the board. I should point out that it was only used in .04 per cent of cases.

Senator Hastings: The amount does not matter, because it is a power that would always have to be used, and if it is taken away, then that .04 per cent will not be able to be considered for parole. We discussed this very thoroughly, and we were of the view that you must always have that, and it disturbs me now that you have instructions to take it away and to include it in these regulations which will be formulated.

Mr. Bouchard: I appreciate your concern. It may be that this committee will wish to make a recommendation that the board retain it. One of the basic arguments for doing away with the provision was the fact that people felt it would give more credibility to the board if it did not have the power to retain it, because people felt that while we were talking about parole eligibility dates of one-third or seven years, at the same time the board had powers of exception and thereby could technically release somebody after one year.

Senator Hastings: Again, Mr. Chairman, referring to clause 23 and the regulations, I pointed out the danger of using the words "class or classes of inmates". I do not know whether the department is ready to make some amendments in that area or not. But it is very dangerous to set regulations for a class of inmate. We have 8,000 inmates and so we have 8,000 different problems, and they have to be treated in 8,000 different ways. So to set classes is very unfair and detrimental to the operation of parole.

Mr. du Plessis: On the other hand, if you rephrase clause 23 in terms of classes of offences, I believe you build in a certain rigidity which does not allow for the flexibility that the officials have indicated they need in classifying

types of inmates. I believe that, when speaking informally after the last meeting, some of the officials gave examples of what they meant by "classes of inmates", and perhaps they would like to elaborate on that now.

The Chairman: I think it should be elaborated on.

Senator Hastings: Yes, if you could just explain sub-clause (b), where it says:

(b) prescribing the portion of the terms of imprisonment that inmates or classes of inmates must serve before temporary absence without escort may be authorized...

The Chairman: "Class of inmate" is used all the way through.

Mr. R. B. Macauley, Legal Adviser, National Parole Board: I take it to mean that classes of inmates would have almost a direct relationship to the type of offence committed, similar to the provisions in the Criminal Code with respect to people serving sentences of an indeterminate nature. We have specific parole eligibility requirements with respect to day paroles and temporary absences in the Code and with respect to people serving minimum life terms of imprisonment. I assume that in this situation classes or groups of offenders who become eligible for TA would have to be seen by the board in some cases where other authority for their release would be delegated to the director of the institution. I am sure they want to have flexibility, but they also want to have armed robbery, for example, perhaps as a class or group, and perhaps they are thinking more in terms of relationship to the voting procedure. At the present time they have a schedule of votes, and the vote is relative to the seriousness of the offence. The more serious the offence, the more votes required. Perhaps it is an unfortunate choice of word, but I think this is what they mean in terms of classes of cases, so that there would be some relationship between the seriousness of the offence and the number of votes required to have that person released.

Senator Hastings: But if we move to class of offence, there is armed robbery and there is armed robbery. A man may steal \$100 and should never be released on TA for a considerable length of time, whereas another, who stole \$1,000 may be considered to be ready.

Mr. Macauley: Exactly.

Senator Hastings: Which is the dangerous part of "classes of offences" and "classes of inmates". It would take away all your flexibility in dealing with the individual, as to his needs and progress in custody.

Mr. Bouchard: Senator, I feel that by referring to "classes of inmates" as opposed to "classes of offences", we would retain the flexibility, which otherwise would be lost because there would be no opportunity to differentiate between the seriousness of offences. Although it might fall under armed robbery, for instance, if the accused were carrying a water pistol the board has the discretion to remove him from that class. However, if we refer to classes of offence, he must stay in the appropriate category and perhaps serve longer than he otherwise would.

Mr. Charette: Mr. chairman, if I may also put on the record a comment I made on Tuesday off the record, I suggested that "classes of offences" would also be too restrictive, because in many cases it may have very little,

or nothing to do with the offence itself, but may be for administrative reasons. The example I gave was that a class of inmate could be inmates being transferred to a provincial mental institution or provincial hospital. There may be reasons to enact regulations which are much more flexible. The inmate may be a murderer, or have stolen \$50, but because of the administrative problem he would be included in a certain class.

Senator Neiman: It seems to me, also, Mr. Chairman, that offenders can be convicted for crimes which are relatively innocuous and it may not have been possible to convict him for the more serious crime being prosecuted. He is classified as a dangerous offender. Therefore, classifying by type of offence is not sufficient in that sense.

Senator Hastings: At one stage you gave consideration to parole at a third sentence, and the regulations were amended approximately two years ago to make it one-half?

Mr. Macauley: I believe you are referring to the regulation which provided that if parole was forfeited and the parolee returned to prison he must serve half of the new term.

Senator Hastings: It said the term must be increased to one-half.

Mr. Bouchard: Only on forfeiture, which is for the commission of a new offence while on parole.

Senator Hastings: It had nothing to do with the length of the sentence. Formerly it was one-third or seven years.

Mr. Bouchard: Yes, that is still so. It is now one-third or seven years, except that if parole is granted and forfeited it becomes one-half of the new term.

Mr. Hollies: Senator, it is important to realize that these regulations do not necessarily cover every class of inmate. You have been concerned and, if I may say so, I understand the concern, that the board would be hamstrung or trammelled by a series of regulations applicable to all inmates. This is only an enabling provision, so that the Governor in Council may order that in respect of certain classes TAs may not be granted, or parole for a specified period of time. It does not, however, apply to the whole field, but leaves the board with flexibility in connection with run-of-the-mill cases.

Senator Hastings: This is a dangerous concept. We heard the statistics this morning with respect to murder and an act was passed providing that the inmate must serve seven years regardless of how well he progresses. We would destroy all the good done for those men. Some murderers should not be granted parole or TA and the discretionary power of the board would be destroyed.

Mr. Hollies: My only point, senator, is that, apart from the legislative constraints, the regulations will not necessarily operate to constrain the board in all respects. Perhaps I should have left it alone while it was fairly quiet, but I thought it might be helpful if I explained that.

Senator Hastings: I will have more to say with respect to the regulations. I turn to clause 23 of the bill, at page 60, which repeals section 9 of the act, and substitutes the following subsection:

(2) A regulation made under subsection (1) may be made to apply generally or to a specified area or region of Canada, or to a certain class or classes of inmates.

That regulation really disturbs me. Is it the intention to treat people differently in different areas?

Mr. Hollies: This is because of the regulations being binding on provincial parole boards. We may be introducing a regulation applicable to National Parole Board operations providing that every inmate must be granted a personal interview at time of revocation. Undoubtedly that will be included. The provincial boards may not be able to introduce that, for manpower reasons, for a further period of six months or so. We would therefore give them an exemption from that regulation. Otherwise they would be bound by all the regulations applicable to the National Parole Board. That is the reason for bringing it in on area request. It is not a question of the National Parole Board treating people differently in different regions.

Senator Hastings: Is that not what it says? I will read it again:

(2) A regulation made under subsection (1) may be made to apply generally or to a specified area or region of Canada, or to a certain class or classes of inmates.

Mr. Hollies: Yes, sir; that is what it says, but all I can say is that as far as the National Parole Board is concerned it will not treat people differently in different regions. However, as these regulations bind any provincial boards as they are established, they may have to be phased in at different times for those provincial boards, depending on the state of their organization, resources and manpower.

Senator Flynn: Do you mean that if regulations existed under the provincial authority you would not intervene, but if there was none in a given province you would establish a set of regulations applicable only to that province?

Mr. Hollies: Not quite, Senator Flynn. If I have understood you correctly, the basic regulations will apply to the operations of the provincial boards.

Senator Flynn: Yes, I understand that.

Mr. Hollies: Perhaps I have not seized your question properly, senator.

Senator Flynn: Is it to fill a gap occasionally in a given area?

Mr. Hollies: No, it is not to fill a gap; it is so that when the National Parole Board adopts the regulations which will make their operations much more widespread and impose stringent duties upon it, those regulations will not have an impact on the provincial boards until they are ready and able to assume those duties. It is not a question of filling a gap, because the gap will be filled the other way around. When provincial boards need special regulations which are not applicable and not inconsistent with the national regulations, they have the power to make those regulations in respect of the operations of their boards. Have I made myself clear, sir?

Senator Keith Laird (*Deputy Chairman*) in the Chair.

Senator Flynn: Perhaps you could cite an example of a regulation which would apply to a specific area?

Mr. Hollies: Let us take the regulation that will soon be introduced providing that an inmate is entitled to a hearing before his parole is revoked. Let us further assume that Quebec, Ontario and British Columbia have established

boards. We may decide that Ontario and Quebec are ready to move on this now, having their boards in place and will then be able to cope, but British Columbia is not ready. The regulation then could be made to apply, except in respect of the board in British Columbia and we would be waiting for the province to inform us when the regulation could be brought in for it.

Senator Flynn: What would be the situation in British Columbia in that case? Would the general regulations apply?

Mr. Hollies: No, sir; the situation in British Columbia in that case would be that in federal institutions the rule applicable to the National Parole Board would apply—in other words, revocation. But so far as people in provincial institutions, under the jurisdiction of the provincial authorities, are concerned, the regulation would not apply—not until they said they were ready to have it brought in.

Senator Flynn: That could possibly bring in a different regime in one area than in the others.

Mr. Hollies: It undoubtedly will, sir.

Senator Flynn: That is the point that Senator Hastings wanted to make.

Mr. Hollies: As the deputy chairman reminded me, it would only be for a period of time, but there would be a transitional phase where that was quite possible.

Senator Hastings: What I am worried about is your saying that an inmate is entitled to a temporary absence after one-fifth of his sentence, except in Quebec, where he has to serve one-half, and in Alberta, where he has to serve one-third. They are all Canadian citizens.

Mr. Hollies: The difference there, senator, is that people in provincial institutions are not subject to the Penitentiary Act. Accordingly, the power of the National Parole Board in respect of temporary absence does not apply to inmates in provincial institutions.

Senator Hastings: You say that an inmate must serve one-third. I would hate to think that it has to be one-third in Alberta and one-half in New Brunswick.

Mr. Hollies: There would be general application all the way through.

Senator Hastings: That is what disturbs me. You could make regulations there for every part of Canada.

Mr. Hollies: It could be done, but it would not—not in that area. The whole thrust of our discussions with the provinces has been that there must be national standards on basic matters; that the rights of the individual, so far as eligibility for parole, the circumstances under which revocation is possible—not necessarily will occur—will be uniform. But these additional rights that are being conferred upon the inmates through the medium of regulations made under section 9 can only be introduced when there is a meaningful resource to deal with it.

Senator Hastings: In that province?

Mr. Hollies: In that province; except that the National Parole Board will operate uniformly across Canada.

Senator Hastings: Can you tell the parole board of Alberta how to operate, under the regulations?

Mr. Hollies: Yes, we can. The regulations made by the Governor in Council will be binding on the parole board of Alberta, unless the board is exempted in the regulation itself.

The Deputy Chairman: Are you still worried, Senator Hastings?

Senator Hastings: Oh yes, but I will struggle on.

I come now to section 27. I would like to move an amendment that:

Subsection 15(1) and (2) of the said act be repealed and all other words be stricken.

The Deputy Chairman: All right. Give us your reasons.

Senator Hastings: To repeal mandatory supervision.

The Deputy Chairman: In a rather important matter like this, there would perhaps be a good deal of discussion. If members of the committee are not prepared to discuss such a fundamental matter today, perhaps I might ask you to reserve that motion for a later occasion. Our chairman has now returned from his "TA."

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

Senator Neiman: Mr. Chairman, if I might be allowed to speak to that, I agree with our deputy chairman. I think this is a matter that requires some further discussion. I would hope that we could defer consideration of the motion until we conclude our review of the act.

Mr. du Plessis: I think it should be noted that this is a study of the subject matter of the bill; it is not a clause-by-clause consideration of the bill.

Senator Hastings: I will defer to the distinguished chairman. I have just made a motion to section 27, Mr. Chairman, to delete all words after the word "repealed." However, my distinguished colleagues feel that it is of such importance that we should leave it for further discussion at a later date.

The Chairman: I think we should defer it for further discussion.

Senator Hastings: I serve notice that I am going to move it and will vehemently pursue it.

The Chairman: As counsel has pointed out, we are not making a clause-by-clause study. It is now on the record, and we will reconsider it in due course.

Senator Hastings: I come now to page 64. Mr. Bouchard, I notice you have adopted one of our major recommendations with respect to time spent on parole that will not have to be re-served on revocation. Am I correct?

Mr. Bouchard: Yes.

Senator Hastings: He will have to return and:

serve the portion of his term of imprisonment that remained unexpired at the time he was granted parole, including any statutory and earned remission, less

(a) any time spent on parole after the coming into force of this subsection;

(b) any time during which his parole was suspended and he was in custody;

That is, awaiting trial, or sitting in the "jug" somewhere; and:

(c) any earned remission that stood to his credit upon the coming into force of this subsection.

Should that not say "any earned and statutory remission that stood to his credit"?

Mr. Hollies: Statutory has always been subject to forfeiture on revocation of parole; but earned remission, up until the passage of this bill, if it is passed, is a vested right. It is for that reason that earned remission is specified by itself. It has never been subject to forfeiture under any consideration, whether it has been by way of forfeiture of parole or otherwise. There is an automatic recredit under the Penitentiary Act to anything lost by way of earned remission on forfeiture of parole. It is merely to preserve that right, that the earned remission which has stood to his credit before the coming into force of the act remains to his credit—so they do not suffer from the introduction of the act.

Senator Hastings: Would it not be fair and equitable not to require him to have served the statutory remission he had earned while he was in custody?

Mr. Hollies: He did not earn it.

Senator Hastings: But it stood to his credit.

Mr. Hollies: Statutory remission is expressed as being a conditional remission subject to good conduct. It is subject to forfeiture for disciplinary offences. It has always been subject to forfeiture for breach of parole conditions, and that principle has been maintained. Whether the principle is right or wrong, I am in the hands of this committee and the committee of the other place.

Senator Hastings: It is not too important, because we are not going to have any more statutory remission. It is all going to be earned.

Mr. Hollies: it will be important, because statutory remission that is now credited will remain to his credit. When we get into the Penitentiary Act, we will come to that.

Senator Hastings: Why do we not include the earned remission while he is on parole?

Mr. Hollies: He does not earn any remission while he is on parole.

Senator Hastings: Well, he is continuing his sentence.

Mr. Hollies: Yes, but when you get to the earned remission you find it is a credit when he has applied himself industriously to the program of the penitentiary in which he is incarcerated.

Senator Hastings: But he is applying himself exactly the same on parole. He is applying himself industriously, his term is continuing, time is going on. He should . . .

Mr. Hollies: How are you going to grade it, senator?

Senator Hastings: Well, if he is out two days—one day for two days on parole, the same as you do in a penitentiary.

Mr. Hollies: When you say "in a penitentiary", this is going to be the subject of very careful examination: how has his conduct been, how have his work habits been, and so forth.

Senator Hastings: It is exactly the same on parole: if he is fulfilling his parole, conducting himself industriously and doing what is required of him, he should be earning his remission on parole—because we say in section 26 that the term of imprisonment of a parole inmate when he is on parole continues on.

Mr. Hollies: I take it your contention would be that if his parole were revoked, he would still be credited with that earned remission on parole as well as every day that he spent on parole?

Senator Hastings: Up to the day of revocation, yes.

Mr. Hollies: It is an interesting concept, senator.

Senator Hastings: Do you not consider it a worthwhile concept?

Mr. Hollies: I do not think I should pass judgment on whether or not the concept is worthwhile.

Senator Hastings: One of the main conclusions of the Committee on Parole was that a man's sentence be continued in force whether he is in a minimum security institution, a maximum security institution, a hospital for the mentally insane, or on parole. Time is going on and he is serving his sentence, whether he is on parole, in a mental home, or wherever, and he should be entitled to earn his one-day remission for two days served and should not have to re-serve that time in the event his parole is revoked.

Mr. Hollies: No doubt, senator, that concept will be subject to further consideration when you reach clause by clause study of the bill.

Senator Hastings: That is right, and I serve notice that I will be introducing an amendment in that respect.

The Chairman: I have one question on the statistics which were provided the committee the other day. We requested the statistic relating to the number of inmates who committed murder while on parole. In that connection, the following article appeared in the *Montreal Star* of March 31, 1976, and I quote:

It took a British Columbia Supreme Court jury less than 30 minutes yesterday to find Glen Wayne Jansen, 24, of Vancouver, guilty of murder . . .

And the article goes on to say:

The jury recommended that Jansen be imprisoned for at least 20 years before being eligible for parole.

Apparently, the accused was on day parole at the time he committed the crime.

Did the figure provided to the committee include murders committed by parolees on all forms of parole?

Mr. Bouchard: That figure did include those on all forms of parole, yes.

Senator Hastings: Up to what date?

Mr. Bouchard: The figure that was given to the committee was up to March 31, 1975.

The Chairman: The murder to which I made reference a moment ago took place on June 24, 1975, so it would not have been included in that figure.

Senator Hastings: As I understand it, Mr. Chairman, we asked for the figure related to convicted murderers on parole.

Senator Neiman: I think you are right.

Senator Hastings: The figure we received was 184 convicted murderers.

The Chairman: I think you are right. Dealing with the proposed regulations, they were to give effect, to a degree, to this committee's recommendation with respect to introducing some element of natural justice into the parole system. In that connection, I notice the explanatory note on clause 23 of the bill states that these measures will be phased in over the next few years.

Mr. Bouchard: That is correct, Mr. Chairman. Because of the present budgetary constraints, we are unable to obtain the needed funds from Treasury Board. For that reason, these measures will have to be phased in over a period of two or three years.

The Chairman: You envisage a period of two or three years?

Mr. Bouchard: Yes, Mr. Chairman.

Senator Hastings: Dealing with revocation of a parole, essentially you are going to follow the same procedure as previously, except for going to the judge for the committal, or whatever that procedure was. This committee was very concerned that there should be a review of any revocation order by someone other than the person issuing the order. I notice you left it the same way. Is there any reason for that?

Mr. Bouchard: Instead of pursuing post-revocation hearings, the board will be entering post-suspension hearings; that is, the individual will be interviewed prior to his parole being revoked or a decision to release him back on to the streets.

Senator Hastings: If a revocation order is issued, the parolee is immediately incarcerated . . .

Mr. Macauley: The individual's parole would be suspended. It is a board decision to revoke parole. The designated person cannot revoke parole. That is a decision of the board. The designated person can suspend parole, following which he has 14 days to make a decision as to whether or not he should cancel parole. It may be that he will want to apprehend the parolee for the purpose of discussing a particular problem with him, and within 14 days he has the discretion to cancel that suspension, in which case the parolee simply goes back on parole. If the situation is serious enough, the designated person must, within that 14-day period, either make a decision to cancel the suspension or refer it to the board for decision. After being supplied with the report and the circumstances, the board may cancel the suspension and release the parolee, or it may revoke the parole.

Senator Hastings: The person, then, suspending the parole is the same person who interviews the inmate?

Mr. Macauley: In practice, the policy is that the parolee has to be interviewed by a person other than the individual who issued the suspension.

Senator Hastings: I think the committee's recommendation was that the board must see the individual within 30 days to make its decision as to revocation or the cancelling of the suspension order.

Mr. Macauley: In our regulations or rules with respect to procedures, it is anticipated there will be an outside period

of 59 days for such decision. There is, first of all, the 14-day period of suspension, and it must be in the board's hands on the fourteenth day. The board would then have 30 days within which to make its decision, and we are allowing an additional 15 days so that the board can prepare reasons in writing for its decision. There would be a maximum period of 59 days involved, which would cut down considerably on the long delays to which you are alluding.

Senator Hastings: To go through that again, within 14 days of being suspended, the inmate is interviewed as to whether or not that suspension should be lifted or the matter referred to the board for revocation...

Mr. Macauley: We are also saying "or such lesser period as the board may direct." If the board wants an interview within 10 days, then it will so direct.

Senator Hastings: It is then referred to the board for decision as to revocation. Would there be a hearing by a board member?

Mr. Macauley: Eventually, there would be a hearing. Because of the manpower implications, these measures have to be phased in. In the first year, we are planning on going into the hearings for parole, day parole and the development of an internal review procedure whereby a person can have a decision of parole denial reviewed as well as a revocation review. In the first year, we are not in the position manpowerwise to go into what we are going to call suspension hearings. Before parole is revoked, the plan is that the inmate will be seen and will be given an opportunity to justify his position in terms of the allegations made against him as to why his parole should be revoked. That measure could conceivably be phased in during the course of the second year, and perhaps the question of assistance to the inmate in presenting his case for parole, whether by a lawyer, a next friend, or whatever can be phased in.

The reason there are so many enabling sections is that we wanted to cover all of the phases of the natural justice aspect, but they will have to be phased in on a gradual basis. Our first target was to cover the entire spectrum, and we made tentative rules and regulations for so doing. However, when we were confronted with the manpower implications, we had to arrive at the decision to phase these various measures in over a period of two or three years. Hopefully, by the end of the third year all of the enabling provisions and all of the safeguards—the hearings and representations—will be in place.

Senator Hastings: One of our biggest concerns was the time lag involved in this process.

Mr. Macauley: That will be in the rules.

Senator Hastings: I can understand why you have only 26 members.

Senator Neiman: Conceivably a man could be suspended and recommitted to jail, presumably a local jail. Or will he be sent back to the prison while you are waiting for the parole procedure?

Mr. Macauley: The reason we are bypassing the court is because we thought it would be much more practical. Assuming we are going into the program of giving the man a hearing before revocation, he may be in Moosonee when he is apprehended; he is put in the local jail; he is interviewed and a decision is made that there will be a recommendation for revocation. We are hoping to provide for

what we would call a transfer warrant, and then he would be transferred to the nearest federal institution so that he would be available for the suspension hearing.

It would be perhaps prohibitive in cost if we took everyone we apprehended hundreds of miles to a federal institution; the people immediately supervising him would not be able to have a proper interview with him. If it were decided to cancel parole we would have to transport him all the way back to where he should be and release him on parole. We are hoping to have a procedure that is very flexible. If the nearest place for his incarceration happens to be in the immediate local area, that is where he will go on suspension. If he is going eventually to have a hearing, if the suspension is not cancelled we would see that he is transported to a place where there will be board members who will be able to give him his hearing and then make a decision.

Senator Neiman: Conceivably, over a period of time a man could be suspended, held, released and suspended again, then released. He could go through this procedure quite often.

Mr. Macauley: I think from the board's point of view they are commonly referred to as therapeutic suspensions. As far as the policy of the board is concerned, they do not look favourably on this type of suspension and then cancelling it. I do not think you will find that happens in practice. In the majority of cases, if there is a suspension the parole officer who makes a decision to suspend has to go to a superior, who is somebody with the authority to authorize a suspension. Only certain people are designated as people who can authorize a suspension, so there is a check. An officer cannot frivolously suspend; he has to go to a superior, who would say, hopefully, "I do not think that is justified. I am not authorizing suspension at this time. You go back and work the thing out," or whatever the case may be. Normally when the decision to suspend is made, I would say in the majority of cases the intention is to interview the man; he must, as a matter of practice, be given the reasons in writing as to why he has been suspended; then the matter is referred to the board. He will have the reasons in writing and he can dispute those at the stage when he has a hearing.

In lieu of having hearings immediately, we have on an experimental basis been conducting an internal review procedure. At headquarters we have a panel of board members appointed who review decisions. It has not necessarily been publicized, but if the board becomes aware of the fact that somebody is dissatisfied with a decision to revoke parole and they write in, there is a paper review, and that panel has authority to reverse the decision of those who revoked the parole, or make suggestions as to how it should be handled, or they could cancel the revocation. The man will have some protection by way of internal review. Perhaps ultimately the ideal situation will be when we are able, from a manpower point of view, to actually give him a hearing, and go a step further so that he can have somebody there to represent him when that decision to revoke is being considered.

Senator Hastings: Mr. Chairman, I can only comment that our study on parole has been of great assistance to the board in bringing forward this legislation. When you look at our recommendations and the changes proposed, as always the Senate has performed a very useful function and purpose.

Senator Neiman: That is a very self-serving remark.

The Chairman: There will be no dissent from that by the committee.

Senator Hastings: I have got to get my amendments through, and I am building on it now.

The Chairman: The next section deals with amendments to the Penitentiary Act, followed by amendments to the Prisons and Reformatory Act. We have here the Deputy Commissioner (Security) of the Canadian Penitentiary Service. Do we want to proceed with that today, or shall we wait until our next meeting? I know that Senator Laird has to leave in about 20 minutes.

Senator Langlois: I have to leave with him.

The Chairman: Then I suggest we adjourn now and continue with the remaining to this legislation next Tuesday morning at 10.30. It will give Mr. Westlake, the Deputy Commissioner, a little time.

M. W. C. Westlake, Deputy Commissioner, (Security) Canadian Penitentiary Service: Another reprieve!

The Chairman: It is temporary parole!

Senator Laird: A week's parole.

Senator Hastings: Mr. Chairman, do you have any indication of our work schedule and what is proposed for next week and the week thereafter, until Easter?

The Chairman: I was talking to the deputy chairman, Senator Laird, yesterday about this. I think it might be worth while to say something on this now, Senator Laird.

Senator Laird: My point of view, as expressed to the chairman, was that because a motion has been introduced in the House of Commons by the Honourable Mitchell Sharp with respect to the debate...

Senator Langlois: Closure.

Senator Laird: Yes, closure—it is proposed that the debate on this bill will be limited to four sitting days—it means it will probably get into committee before Easter, but they probably will not do anything about it in committee. However, if our interim report, if you want to call it that, is to have any utility—in other words, if it is available to the minister in committee, if he agrees with any or

all of our amendments and is proposing them—we should at this stage endeavour not to call witnesses or do anything that will prolong the discussion, but should make an interim report. We will, of course, get another crack at it when the bill comes before us in a formal way from the House of Commons.

Senator Hastings: In July!

The Chairman: What are your views, Senator Neiman?

Senator Neiman: Mr. Chairman, I agree. I had spoken to the chairman of the Justice and Legal Affairs Committee in the other place. He was hoping to have a meeting with his steering committee this week to determine the witnesses they will call, but it is obvious at this point that they will not commence their hearings until after the Easter break.

I believe it would be useful for us to make an interim report and pass it on to the ministers concerned. I can also check with the chairman of the Justice and Legal Affairs Committee to be sure that we do not duplicate the types of witnesses we will have at a later consideration of the bill.

The Chairman: Have we sufficient in the way of recommendations to make an interim report?

Senator Laird: Mr. Chairman, reserving our rights for any further suggestions, perhaps on Tuesday we should quickly prepare an interim report based on what we agree upon as recommendations. In that event, it would be desirable to have the weekend to consider Senator Hastings' suggestion concerning eliminating mandatory supervision. We should be allowed to think about that over the weekend, and then come back prepared to discuss it and dispose of it on Tuesday.

The Chairman: On Tuesday we will continue our consideration of the Penitentiary Act and the Prisons and Reformatory Act, which conclude the preliminary study of this bill. At that point we can begin considering what interim recommendations we are prepared to make. Is that agreed?

Hon. Senators: Agreed.

The committee adjourned.



Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

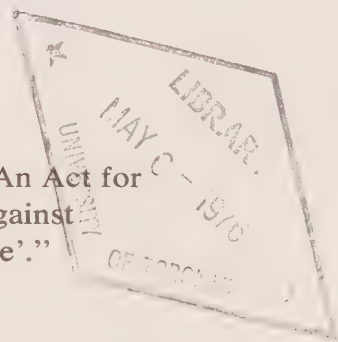
Issue No. 40

TUESDAY, APRIL 6, 1976

Fifth Proceedings on:

“The Subject matter of Bill C-83 intituled: ‘An Act for
better protection of Canadian society against
perpetrators of violent and other crime’.”

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(19)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, 4th March, 1976:

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Langlois:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the subject-matter of the Bill C-83, intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime", in advance of the said Bill coming before the Senate, or any matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, April 6, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:35 a.m., the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Flynn, Godfrey, Hastings, Laird, Langlois, McIlraith and Neiman. (9)

Present but not of the Committee: The Honourable Senator Lucier.

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its examination of the subject matter of Bill C-83 intituled "An Act for the better protection of Canadian society against perpetrators of violent and other crime".

The following witnesses, from the *Ministry of the Solicitor General*, were heard in explanation of the said subject matter:

Mr. W. Westlake, Deputy Commissioner,
(Security), Canadian Penitentiary Service;

Mr. J. H. Hollies, Q.C.,
Departmental General Counsel;

Mr. P. Carey, Chief,
Sentence Administration,
Canadian Penitentiary Service;

Mr. André Charette, Executive Assistant to the Commissioner of Penitentiaries,
Canadian Penitentiary Service.

At 12:10 p.m. the Committee adjourned.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, April 6, 1976

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.30 a.m. to consider the subject matter of Bill C-83, for the better protection of Canadian society against perpetrators of violent and other crime.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, in continuing our study of Bill C-83 we had reached Part IV on pages 65 to 69, proposing amendments to the Penitentiary Act, and Part V, on pages 69 to 71, proposing amendments to the Prisons and Reformatories Act. Witnesses are in attendance, and I will ask Mr. Hollies to tell us who will explain the proposed amendments and be prepared to respond to questions. Mr. Hollies, is it Mr. Westlake?

Mr. J. H. Hollies, Q.C., General Counsel, Ministry of the Solicitor General: Mr. Westlake, I believe, is prepared to do so, Mr. Chairman.

The Chairman: Mr. W. Westlake, Deputy Commissioner (Security), Canadian Penitentiary Service. If you have others with you to whom you might refer questions, please ask them to sit beside you, Mr. Westlake. Would you, then, tell us in summary, Mr. Westlake, the intention of the changes provided in the proposed amendments?

Mr. W. Westlake, Deputy Commissioner (Security), Canadian Penitentiary Service: Yes, sir; I would consider three or four to be major proposed amendments. Maybe I can just run through them, then leave it to senators to raise whatever issues they wish, if that meets with your approval, Mr. Chairman.

The first major amendment is that which addresses itself to a change in the organization structure, in that it would bring the National Parole Service under the direction of the Commissioner of Corrections, as opposed to the Commissioner of Penitentiaries, who is now responsible for the Canadian Penitentiary Service alone, the Parole Service coming under the direction of the National Parole Board. That would be the first major amendment.

The second amendment deals with the abolition of statutory remission, replacing it with a new type of earned remission. This would have a major bearing on the possible release dates of inmates from our system.

I suppose the other major amendment is that which addresses itself to changes in the administration of temporary absences, which to this point in time has been under the authority and direction of the Commissioner of Penitentiaries. Under the proposed amendment it would fall under the direction and authority of the National Parole Board in the case of unescorted temporary absences, and the escorted temporary absences would remain under the authority of the Penitentiary Service.

Those are the three major areas in which amendments are proposed. The mechanics are something else, which we would be prepared to discuss with you this morning.

For the information of honourable senators, I have with me this morning Mr. J. H. Hollies, Departmental General Counsel, who is known to all of you, I am sure; Mr. Andre Charette, Executive Assistant to the Commissioner of Penitentiaries; and Mr. Pat Carey, who is chief of Sentence Administration and is responsible for the computation and analysis of inmate sentences. Should there be any questions in that area, especially for you, Senator Neiman, who raised this issue earlier, we have brought Mr. Carey along.

Mr. Chairman, those are basically the areas in which we see the changes. We are, hopefully, in a position to answer your questions this morning.

The Chairman: Are there any questions?

Senator Buckwold: Mr. Westlake, have you any general comments to make on these proposed changes which you have outlined? Do you have any particular points of view to express that are not contrary to the general policy, on some of the implications of these changes?

Mr. Westlake: I think that probably it would be safe to say that we are basically happy with the proposed amendments. I think that the change in the organization, which will bring the Penitentiary Service and the Parole Service under common leadership, certainly is a very progressive step. Often our roles have been confused in the community; we have had overlapping areas of responsibility and authority. I think the proposed changes will go a long way to eliminating the confusion which does exist and will provide a better method of providing services and direction to the inmates from the time they come into our system until they are finally released. That has not always been the case, as you know, in the past.

In terms of the changes in remission, I think those of us who have been associated with the system as we know it have felt that it has left much to be desired, in that giving inmates one-quarter of their sentence off as soon as they walk in the door, under the current statutory remission legislation, it destroys any incentive or initiative on their part really to try to take advantage of or to participate or cooperate in the programs of the institution. It has almost become an automatic procedure. Many of our inmates come in and are automatically remitted one-quarter of their sentence. They do very little of a positive nature while they are in our institutions. Perhaps they do not do anything that is terribly negative in the system, but, by the same token, they do very little to change themselves while they are in; and because of the type of statutory remission legislation that we now have, they automatically receive one-quarter of their time and are discharged at a date earlier than we would like to see some of them go out.

The Chairman: Have you noted any effect on sentences because of statutory remission? In other words, is it possible that judges impose a longer sentence because they feel that the accused deserves a longer sentence, and they get around statutory remission that way?

Mr. Westlake: I suppose it would be safe to assume that. I would like to go on record as saying that is what happens. I know from our own experience, for example, of cases where inmates have escaped in the past and they forfeit three-quarters of their statutory remission as a result of that incident. Judges often take that into consideration when they are sentencing them for having committed the offence of escaping from lawful custody. I am sure that has a bearing. It would be pretty naive to suggest that any judge or magistrate, when he is sentencing an inmate to our system, is not aware that statutory remission does exist, and he takes that into consideration when he passes sentence.

Senator Buckwold: Under the new system, when you are moving into earned remission, would the time remitted end up about the same, for the average inmate?

Mr. Westlake: It would come out to about the same, where an inmate could be released at the two-thirds point in his sentence. If he earns 15 days a month, as opposed to getting one-quarter off now and earning three days a month, under the new legislation it would still work out that he could serve two-thirds of his sentence.

Senator Buckwold: What would be the conditions under which he would not earn his remission?

Mr. Westlake: Right now we have a system where an inmate can earn either zero or three days a month. There is nothing in between. Under the proposed new legislation an inmate could earn up to a maximum of 15 days per month, and it would be based on three criteria: one would be work; the second, conduct; and the third, participation in other facets of the program. For example, if he were a drug addict or alcoholic we would expect that he would avail himself of some of the clinical resources that are available to him to help him overcome that particular kind of problem.

The way we see it is that it would probably be something like the scale of five days in each one of these areas where an inmate would be eligible to earn.

Senator Buckwold: Would that be assessed every month?

Mr. Westlake: I think the legislation says not less than every three months. That is for record-keeping purposes, in order that we will be able to keep track of who is going out at one time. It will involve more bookkeeping, but not complicated bookkeeping. For example, if an inmate was serving three years and had a total 1,095 days that he would have to serve, this would be reduced. We see ourselves setting up a ledger where each month an inmate would be credited with the actual number of days served plus the number of days of earned remission credited to him. It would be reduced. It could either be done on a monthly basis or not less than once every three months.

Senator Buckwold: Are you reasonably satisfied that it will be a fairly objective assessment, as against the prejudices of someone who does not like the inmate?

Mr. Westlake: Yes. That is one of our main concerns—that is, setting up the mechanics of administering this

system in order to make sure that it is objective. Right now we are looking internally at the system that will have to be put into place if the legislation goes through. We are also setting up boards that will be chaired by an assistant director—probably an inmate-training man in the institution who would be responsible for chairing this particular board. Under our system, the inmates do have recourse to a grievance procedure by which they can grieve, and they would be able to grieve against any forfeiture of earned remission, so I think that probably the safeguards are built into the system. It will probably be more difficult from management's point of view to administer than it is at present.

Senator Buckwold: I am sure that Senator Hastings will explore this further. We are worried about making sure that there is a proper assessment basis that is not prejudiced, that is objectively set up so that everyone receives fair treatment.

Senator Hastings: Under your present system the earned remission is automatic; so long as you are around the place, you will get it.

Mr. Westlake: That is right. If you end up being segregated for X number of days in a month, you automatically forfeit it—or if you attempt to escape. There are a few basics. It is in these particular areas, it seems to me, that most of the inmates fail to earn; but, generally, if they get along in the population and stay out of serious problems, it becomes almost an automatic award at the end of the month.

Senator Hastings: You say every three months. Are you going to tell the man that he had better start earning, or will it be automatic?

Mr. Westlake: If it is not administered properly, then all we have done is create another monster in our system. That is one of the things we are trying to establish now—that is, the mechanics of how we will administer this to make sure that does not happen. I feel fairly confident that for those inmates who fail to earn the total number we will not wait until the end of the three-month period to talk to them, that they will be counselled on a month-to-month basis. It seems to me that even though the legislation says that we have to do it once every three months, we will set the machinery in motion to ensure that we deal with them on a monthly basis.

Senator Hastings: An inmate may lose his earned remission through misconduct, and so on. Is there provision for reinstatement by the commissioner?

Mr. Westlake: Not for earned remission, under the new legislation. Once he fails to earn, it is gone; he cannot get it back.

Senator Neiman: Is there provision for appeal of any kind against a decision? Are you thinking of that?

Mr. Westlake: If there is an appeal . . .

Senator Buckwold: If there was an appeal, and he won, he would get his earned remission.

Mr. Westlake: What I am suggesting is that under the present legislation, if an inmate loses his statutory remission he can apply to have it restored, and it often is restored to him. We are saying that the new system is based on his cooperation on a day-to-day, week-to-week, month-to-month basis, but he has to earn as he goes along.

There is no going back six months from now and being rewarded for something he did not do six months ago. That is where we think it will put some teeth into it. It will motivate inmates to cooperate and participate, where the present system does not make this provision.

Senator Hastings: By the same token, once I lose it you cannot reinstate it for me?

Mr. Westlake: No.

Senator Hastings: How do you propose the turnover for the present inmate—at what date?

Mr. Westlake: It is provided for in the bill.

The Chairman: There is a clause.

Mr. Hollies: What happens, senator, is that those now credited with statutory remission retain that credit after the act comes into force. Persons sentenced after the act comes into force will be starting off. As Senator Neiman mentioned, there is provision here for an overriding maximum, so that someone who has already been credited with one-quarter of his sentence will not be able to get one day for every two days served, except to the extent of allowing one-third of his time off.

To supplement what Mr. Westlake has been saying, we have been talking about failure to earn remission. Earned remission is subject to forfeiture for disciplinary offences. Once forfeited it cannot be restored, as could statutory remission at the moment.

Senator Buckwold: For purposes of clarification, taking the example of an individual serving a nine-year sentence, under normal circumstances he would serve six years. Assuming that inmate is now one and one-half years into his sentence, would he continue on the basis of the present regulations for the remainder of his sentence, or would he start earning remission on the basis of the proposed regulations?

Mr. Hollies: An individual commencing a nine-year sentence will be credited with two years and three months on entering the penitentiary. He will retain that two-year-and-three-month credit and will then earn one day's remission for every two days served from the time he enters the institution, up to a maximum of three years' earned remission.

Mr. Westlake: That regulation is in place so that an inmate cannot end up earning one-half or two-thirds of his sentence for good behaviour. He cannot be credited with more than one-third of his sentence, whether it is a combination of the two systems or under the one system.

Senator Buckwold: But he will still get a quarter of his sentence off?

Mr. Hollies: That will remain to his credit, subject to forfeiture for disciplinary offences, as in the past.

The Chairman: I was not clear on the answer to the question put by Senator Neiman. I think Senator Neiman asked whether there is an appeal from the decision of the disciplinary board.

Senator Neiman: That is right.

Mr. Hollies: So far as an appeal is concerned, there is a technical appeal to the courts in the event that due process has not been followed, subject to what the Supreme Court

decides in the *Martineau and Butter* case. I believe the court has given leave to appeal in that case.

In addition to that, the inmate may grieve that the forfeiture really was not warranted, or that it was unfair, and so forth, and if the grievance is allowed, then the original forfeiture will be nullified, washed-out. There have been cases where that has happened.

Senator Laird: The inmate would grieve to whom?

Mr. Hollies: Perhaps Mr. Westlake can speak on the three stages in the grievance procedure.

Mr. Westlake: In the inmate grievance procedure, there are three stages. The first grievance is to the director of the institution whereby the inmate can grieve the loss of his earned remission. The institutional director, after reviewing the case, can either accept or reject the grievance. If it is rejected, the inmate can submit a similar grievance to the regional director, and the same sort of mechanism would follow. Again, the regional director can either accept or reject the grievance. If it is rejected at that level, the inmate then has recourse to the commissioner, which would be the final stage in the appeal procedure.

Senator Godfrey: There is a woman involved in this grievance procedure.

Mr. Westlake: I think you are referring to our correctional investigator, Miss Hansen.

Senator Godfrey: Yes. Where does the correctional investigator come into the picture? Is the correctional investigator part of the grievance procedure?

Mr. Westlake: Yes, but she is separate and apart from the Canadian Penitentiary Service.

The Chairman: She is an ombudsperson.

Mr. Westlake: That is right, Mr. Chairman.

Mr. Hollies: As I understand it, she takes the position that the three-step grievance procedure should, in all normal cases, be exhausted first. In the usual fashion of an ombudsman, all available recourses are exhausted. If the inmate is dissatisfied with the normal grievance procedure, he may then complain to Miss Hansen, the correctional investigator, who will then make representations to the Commissioner of Penitentiaries on his behalf, if she feels his complaint is justified, or, indeed, representations directly to the minister.

There are circumstances under which Miss Hansen will not insist that the normal grievance procedures be first exhausted. For example, if a man is denied the opportunity to attend court on a custody hearing for his children, the three-step grievance procedure would not be appropriate. In such circumstances, time is of the essence. The inmate may then complain to the correctional investigator, who would attempt to intervene on his behalf.

Mr. Westlake: In most cases where inmates do submit a grievance to the investigator's office, he or she receives a personal interview, either from Miss Hansen or one of her assistants. As you can well imagine, she receives literally hundreds of grievances during the course of the year, so it is a rather large undertaking. She does ensure that all inmates with a bona fide grievance are interviewed.

Senator Hastings: Clause 39, on page 66 of the bill, deals with remission, and the proposed section 24(1) reads:

Subject to section 24.2, every inmate may be credited with one day's remission of his sentence in respect of each two days during which he has applied himself industriously . . .

And so forth. An inmate on day parole and an inmate in a community correctional centre are treated as though they were inmates in a penitentiary?

Mr. Hollies: Yes.

Senator Hastings: So that an inmate on day parole from a penitentiary would earn remission?

Mr. P. Carey, Chief, Sentence Administration, Canadian Penitentiary Service: While on day parole, the inmate will continue to earn his remission. He is deemed to be serving his term as if he were in the penitentiary.

Senator Hastings: Would the same apply to parole?

Mr. Carey: I am sorry, but I cannot answer that.

Mr. Hollies: I think you raised this point at the previous meeting, Senator Hastings, at which time I submitted to you that it would not apply in respect of parole without an amendment to the legislation.

Senator Hastings: The act states that parole shall be day parole.

The Chairman: No, that it shall include day parole.

Senator Hastings: That is what I wanted to clarify. Dealing with another aspect, four or five years ago there was a report prepared dealing with the mental health of inmates in our maximum security institutions. According to that report, about 10 per cent of our inmate population were suffering from mental problems to the extent that they should be held in some other type of custody.

What are we doing with such inmates today?

Mr. Westlake: We have provided for a regional psychiatric centre in each one of our five regions across the country. As you know, we have one in operation in Matsqui, and we have begun construction of a new centre in Saskatoon. That centre will be one the grounds of the university and will be affiliated, in terms of some services, with the university staff.

We have plans to build a new psychiatric centre in Kingston, although it looks at this point in time that it will be built on the grounds of Millhaven Penitentiary. One of the problems we experience, no matter where we go, is that people do not want penal institutions, whether they are penitentiaries, hospitals, treatment centres or whatever. We have had some difficulty finding locations. We have set up our own unit in the province of Quebec and, of course, we are utilizing the Pinel Institute fairly extensively. I believe we have something in the neighbourhood of 40 federal inmates in that institution being treated now. We have been endeavouring to construct an institute in the Maritimes. We are all ready to go but we are having a lot of difficulty in being accepted. The council in Dartmouth recently voted 13 to 1 against construction of a psychiatric centre in that city. I know Dr. Graigen, the Director General, Medical Services, Canadian Penitentiary Service, has been in touch with the people there as recently as these last few days. We are most anxious to get going. We have funds provided to get on with the construction. Therefore, in that perspective, we are trying to provide the resources in-house.

We have found, on the provincial scene, that most of the institutions do not feel they are in a position, from a security point of view, to look after the kind of inmates we would be sending them. Often we do send inmates to provincial institutions and as soon as they react in a fashion that necessitated our sending them to that particular institution, they pack them off back to us and say, "We are not in a position to cope with them." We are left then with no other recourse but to deal with them in-house.

All of our major institutions now have either full-time or part-time psychiatrists on staff. In a number of cases we have fairly extensive psychiatric treatment facilities right in the institution. There is no question that that type of environment is not the greatest, and we would prefer to get the people out into a regular psychiatric hospital.

Senator Hastings: Out of your five regions, you have Matsqui, you utilize Pinel, and you also utilize one in Ontario, do you not?

Mr. Westlake: Correct.

Senator Hastings: In any event, you have precious little accommodation.

Mr. Westlake: In-house, that is right.

Senator Hastings: Therefore, we have the greatest number in-house.

Mr. Westlake: Right.

Senator Hastings: Which is not conducive to the operation of your institutions?

Mr. Westlake: No, it is no good for the total operation of the institution. It certainly does not provide the inmates with the degree of treatment we would like to see them receive.

Senator Hastings: I believe it was the Oberlander report, is that right?

Mr. Westlake: Oberlander, yes.

Senator Hastings: And it came out with a figure that 8 or 9 per cent of the inmates were mental.

Senator Buckwold: That would not apply only to criminal institutions. I am not mentioning any!

Senator Flynn: Don't go any further.

Senator Hastings: What disturbs me is that the dangerous offender legislation which you are proposing is going to lead to your having a lot more psychotic inmates with no facility except the in-house treatment, which in effect is really a form of segregation, is it not?

Mr. Hollies: Senator, I do not think we will have any more inmates, but we may have them for a longer time. All the dangerous offenders must have been convicted of one of the prescribed offences, in the first instance. You are going to have them in, in any event. You may have them in for 25 years, as you yourself pointed out, as in a rape case, or you may have them there on an indeterminate sentence, having been declared a dangerous offender. It is going to be a question of when they are going to be fit to return to society.

The impact is not going to be on numbers but on length of sentence, which has a spill-off effect, and eventually

there will be more psychotic inmates because of the increased length of sentences.

Senator Hastings: We are going to have more psychotic inmates longer, with less facilities to look after them, except for protective custody.

Mr. Westlake: I do not think that is really the way it will be. Even if we were to use your 10 per cent that you are suggesting, with our present population...

Senator Hastings: It was Mr. Oberlander, not me.

Mr. Westlake: I am not in a position to dispute or challenge that figure at this time. However, even if we were to accept that, on the basis of our present population, that would mean we would have 800, or so, of these people in our present system. If we had our five psychiatric centres on deck, we would then be in a better position.

When these were constructed, it was done as a result of intensive consultation with our colleagues within the provincial system. We had made provision for about 30 beds in Saskatoon for use by the Province of Saskatchewan. The Province of Saskatchewan did not want to go their own way on this. In some of the provinces, they have chosen not to become involved in our program.

With the type of facility we are trying to construct right now, we will have enough resources, along with the provincial facilities that we do have access to now, to provide treatment and care for the psychotic type inmates. In addition to that, I think some of the problems created within our institution now come about as a result of the old bastilles which are still operating, 500 or 600-man institutions. We have a fairly extensive construction program which has been approved, for the next five years, which we hope will allow us, somewhere along the way, to get rid of our St. Vincent de Paul penitentiary, our B.C. penitentiary and our Dorchester penitentiary, so that we will get the inmates down from 300, 400 or 500 to something like 180 men in these institutions. All psychotic inmates would not have to be in a psychiatric centre to receive treatment then. If we had a psychiatrist on staff in these smaller institutions, we would be able to address ourselves more to the treatment aspect than we have been able to, to this point in time.

Senator Hastings: At the present time the psychotics are practically all in protective custody, where there is no real in-house treatment.

Mr. Westlake: The treatment they receive now is provided by the psychiatrist who is on contract to each of these institutions.

Senator Hastings: However, there is no facility for them.

Mr. Westlake: There is no separate housing facility.

Senator Hastings: When he is in protective custody, his forms of occupation and recreation are limited, and he is in essence, in a prison within a prison.

Mr. Westlake: In some of our institutions, that is the way it is, there is no question.

Senator Hastings: When was Dorchester condemned?

Mr. Westlake: It do not know that Dorchester has been condemned. It was built in 1885.

Senator Hastings: When was New Westminster condemned?

Mr. Westlake: I am afraid I cannot answer those questions. I do not know if there is anyone else here who may be able to help.

I know that Kingston and St. Vincent de Paul were built...

Senator Hastings: 1888, wasn't it?

Mr. Westlake: Kingston was built in 1835.

Senator Hastings: Condemned?

When you are talking about your building program, I wish you all the luck in the world. However, what disturbs me is we are going to be putting more men into custody for longer periods of time and your problems are going to be magnified immensely.

Mr. Westlake: We acknowledge that. Being responsible for the security portfolio in particular, I am going to be faced with a lot of day-to-day problems in terms of being able to control these kinds of inmates that we are going to have in our system.

You are probably well aware that Dr. Vantour has carried out a study on dissociation and segregation. There have been a lot of studies undertaken. We have a number of people telling us what is wrong with the system, but our problem is to get some good tips on how to correct these problems. We are well aware that this is a major problem to which you are now addressing yourselves. The only recourse we have at this point in time is to try to deal with these problems ourselves.

Construction programs certainly form part of it. We will have to have the proper kinds of facilities to house and treat people. Also we will have to have the human resources, and we will have to have access to outside treatment facilities.

If we look at the situation in Kingston right now, as an example, the armed forces hospital has been closed down as a medical unit and we do not have access to it. That is where all our surgery was being done. We are now in a position where the only surgery we can provide is on an emergency basis in one of the hospitals in the city of Kingston. The other hospital said it would not accept inmates.

We have tried to build treatment centres, psychiatric centres, and the public, for their own good reasons and concerns, which are very valid in many instances, do not want us to build in their particular areas.

You, yourself, senator, have had a pretty hard look at our operations. All of the studies conducted over the years by and large seem to suggest we should be building our institutions close to urban centres, where we will have access to treatment facilities et cetera. However, every time we try to get within almost 100 miles of a major city, we get turned away.

It is no easy task. That is why we are often left to find our own solutions to the problem. Often it seems that the public generally only become concerned with our problems when they mushroom beyond the walls of the institution and the public become caught up in whatever the situation may be.

Senator Laird: It is much like the problem with airports, everyone wants the transportation but no one wants the airport near his place.

Mr. Westlake: That is about the size of it.

Senator Hastings: When we sentence the dangerous offender, under the new act, he will be eligible for parole in three years. Would you agree with me that under our present system not much treatment could be given to him in three years? I wonder if you could say either yes or no, because a shake of the head does not show on the record.

Mr. Westlake: I thought if I shook hard enough something might rattle in here. I would say that it is highly unlikely with this category or type of inmate that anything productive will be done in a three-year period.

Senator Hastings: Would you say that anything productive could be done in a five-year period?

Mr. Westlake: Who is to say, senator? I cannot play a numbers game, really. For some inmates it might not be done in 15 years.

Senator Hastings: You have had experience with these men in this type of custody over long periods of time. Would you agree that precious little happens to them even after 15 or 20 years?

Mr. Westlake: Yes. After 15 or 20 years many of these type will not change.

Senator Hastings: So that we simply do not have the facilities at the present time for dealing with the psychotic, dangerous offender in our institutions.

Mr. Westlake: If you are talking in terms of changing him and making him a different individual, to return him to the community, I would say that in many cases, no, we are not making a meaningful change.

Senator Hastings: That is the purpose of the exercise, though.

Mr. Westlake: Yes.

Senator Hastings: And your answer is no?

Mr. Westlake: Yes, it is.

Senator Hastings: Thank you.

Senator Buckwold: Coming to the defence of the department and speaking as one who comes from Saskatoon, where you are building the new psychiatric care institution, I can say that there has been a real effort on the part of the Penitentiary Service to do something. Incidentally, we ran into the same community problem, but that was solved by putting the institutions out on university grounds. I hope you do not mind my asking one or two questions with a local interest. Has the major contract been let yet for that building?

Mr. Westlake: I truthfully cannot tell you, senator. When I left Saskatoon at the end of the year several of the smaller contracts had been let, but I am not aware that the major contract has been let.

Senator Buckwold: When do you expect to have that institution operational? I presume it will be in the fall of 1977.

Mr. Westlake: I am informed that the completion date is January, 1978.

Senator Buckwold: So something is being done.

Senator Hastings: Mr. Westlake, I do not want it to appear from my questioning that I was criticising your department.

Mr. Westlake: I know that, senator.

Senator Buckwold: How many people will you be able to handle in this new institution? I gather it will be a rather large facility.

Mr. Westlake: It will have bed space for 135.

Senator Buckwold: That represents a significant percentage of the 10 per cent Senator Hastings was referring to, at least for one region, although admittedly it will include some provincial input.

Mr. Westlake: The inmate population on the Prairies right now, senator, is approximately 1,600 or 1,700. Ten per cent of that will be 160. It is obvious that at any given point in time not all of these people will require the same degree of treatment. And we do have some very good treatment. For example, despite the fact that the Saskatchewan penitentiary is one of our older institutions, we have in the course of the last two years built a new hospital there which is an up-to-date facility. We have been working there with the psychiatric staff, and through Dr. Craegen's office, and it is our hope that, rather than moving inmates directly from Saskatchewan penitentiary to Saskatoon, we will have a phased program which they will go through, either on the way to or on the way back from the hospital, so that they will not have to make a major adjustment in going from a hospital environment back to a penitentiary environment.

Senator Buckwold: I wanted to get these points on record, as they tend to offset some of the things Senator Hastings has said, because they show that things are being done by the service and that significant steps are being taken right now, even in my home centre.

You say there will be room for approximately 135 inmates. Will this be basically a treatment centre or will it be a facility for custodial care?

Mr. Westlake: To a certain degree it will depend on the director of the particular facility whether he feels any benefit will be derived from maintaining an inmate in that particular facility. If he thinks there will be a benefit, then the inmate will be maintained there; if not, he will be returned. Obviously, it is not intended to be a penitentiary facility; it is intended to be a treatment centre.

Senator Buckwold: As I see the whole situation developing, therefore, there has been a response on the part of the Penitentiary Service to take care of these people in the face of some rather difficult objections.

Senator Godfrey: That was also my impression.

Senator Buckwold: So, perhaps it is not quite as bad as Senator Hastings would lead us to believe, saying that we have had these people there for years and years and nothing has been happening. That may have been the case, but it seems that it is improving.

Mr. Westlake: I think that probably Senator Hastings, more than anyone else here, knows what is going on in our

institutions. He has been there. His name is known by inmates and staff alike, and I respect the sort of things he has tabled. In agreeing with Senator Hastings, by saying that perhaps we have not been able to do all of the things that should be done for inmates, I am in no way suggesting that we have thrown in the towel or have given up the struggle. Moreover, I believe everything is relevant to the point in time you are dealing with. I certainly cannot be accountable for what has gone on for the last 100 years, any more than anyone else here can. The fact is that we are not happy with the track record or with the sorts of programs and facilities we presently have, but we are continually striving to improve the sorts of facilities and programming available, and we are most interested in creating a better image so that people will have better understanding of what really does go on in our institutions and why certain things take place there.

I believe bad facilities have been the major contributing problem to the sorts of things that have taken place in our institutions. We had a good ten-year program which was developed a number of years ago, in the sixties. Unfortunately, probably for good and valid reasons at that particular time, that program was terminated prematurely, and I am sure that has quite a bearing on the sorts of problems we have been confronted with over the last number of years from an operational point of view. So we acknowledge our shortcomings, but we do look to the future with some hope.

Senator Laird: Mr. Westlake, do you foresee creating a separate institution to house those psychotics incarcerated indefinitely because they will simply never respond to treatment and are thus characterized as hopeless? They can never be released so do you foresee having a separate institution for them—but different from the one at Saskatoon?

Mr. Westlake: Yes. That is one of the recommendations contained in the report tabled by Dr. Vantour. He suggests that we should consider the possibility of providing separate facilities for some of the types of inmates who currently create many of the problems in our institutions, both for themselves and for the administration. His report is now under active review and that is one of the recommendations we will have to decide on.

There is a feeling among many of the personnel at headquarters that there is a need for separate facilities for certain types of inmates. In fact, at one time our plan was to provide in each one of our different regions across the country the types of facilities that would lend themselves to the particular security needs and treatment and training needs of all of the inmate population. To this point in time, however, we have been dealing with three basic classifications: maximum, medium, and minimum security institutions. There are many grey areas in each one of those classifications. At the present time we are reviewing that particular aspect of our operation, and we can foresee that we may well have as many as seven or eight types of institution, each one to provide a different type of program and facility for a different type of inmate.

Perhaps I could mention my own experience in an institution like Warkworth, senator, which is comparable to Drumheller, being classed as a medium security institution. It was fairly specialized when it was opened, and those of us who were involved in the programming and the development of that programming at that institution had many high hopes when we first went there. We were dealing with a selected group—the young, first offender

coming into the system. We developed a sort of rapport and relationship between staff and inmates that you did not find in some of the older institutions. It was a rather low-key approach, in terms of security, and the emphasis was on treatment and programming, but because the population escalated all of a sudden we found ourselves in a position where we had to use the bed space there for what was designated or classified as a medium security inmate.

There are big differences among medium security inmates. In many of our institutions, like Warkworth, the efforts that had been made to devise specialized programs were compromised, to a degree, by the infiltration of many inmates who really did not fit into the kind of program that was being developed.

What we are suggesting now, as we look at the needs of each one of our regions, is that we should be aware that there are more than these three classifications. Let us look at the kinds of inmates we have in our system. We have been working with old established figures—such as, 25 or 30 per cent are maximum, 45 or 50 per cent are medium, and the rest minimum. We built these big monstrosities that have no flexibility in them, and which, once they are built, are there for a hundred years or more; so that if our maximums all become filled up, or our mediums all become filled up, we then have inmates at each end of the spectrum who get jammed into the wrong institutions, where their attitudes certainly have a very major effect on the atmosphere, and on the ability and the desire of the inmates in those institutions to participate in the types of programs that are made available to them.

Perhaps, realistically, we need seven, eight or nine types of institutions. We should have reception centres, for example, so that we can analyze and diagnose the inmates coming in, and separate out those who need the type of treatment you are talking about, such as the psychotic, the long-term and the dangerous offender. We should also have a special type of institution for other types of inmates who are going to be maximum because of the length of sentence or the type of crime involved, but who may not be deserving of the same sort of heavy, static security that we would maintain for the dangerous offender. We need, perhaps, three or four types of medium security institutions where vocational training or on-the-job industrial training can be provided for inmates. Then, also, we have to have minimum security types of institutions where inmates have demonstrated that they have a desire to co-operate and who do not need to serve half or even a third of their sentence inside a fence, under the gun. Then we have to have the final kind of institution, such as the CCCs; and, lastly, parole.

It seems to me, that when we are able to gear ourselves to this sort of an organization, then, realistically, we will be able to come to grips with many of the problems that haunt us at present. As long as we are forced to live with places like the B.C. penitentiary, Dorchester, St. Vincent de Paul and Kingston—and please remember that these institutions house 30 or 40 per cent of our total inmate population—we can do little more than fulfil one of our prime responsibilities, which is to maintain inmates in secure custody so that they do not constitute a threat to the community.

Senator Laird: By the way, in that connection, and with emphasis on the psychotic type of prisoner, would it be fair to ask you if the mental hospital at Penetang is doing a fair job, or are they handicapped by this question of not classifying inmates?

Mr. Westlake: We have a number of inmates in that institution, senator. I do not know what the total figure is. I have never visited it, I may say. It deals primarily with the criminally insane, and our problem is to get inmates certified so that they can be admitted to that particular institution. That is a problem that we face at present. If we had our own psychiatric centres many of these cases that are in the borderline category could be maintained in them.

Senator Laird: I was just wondering. Some of my best clients are in that place.

Senator Hastings: They had a poor lawyer.

Senator Laird: It's better than being hanged.

Mr. André Charette, Executive Assistant to the Commissioner of Penitentiaries, Canadian Penitentiary Service: May I add a supplementary answer to Senator Hastings' comment about the three-and five-year matter, Mr. Chairman? It may be interesting to put this on the record.

We mentioned a regional psychiatric centre in Saskatoon. Our construction plan now says that the regional psychiatric centre in Ontario, located on crown land, to get around the problem of community rejection, has a revised time schedule for construction of this institution, and it should reach completion in July, 1979. That would fit into the three to five-year period that you mentioned, senator.

Senator Hastings: I did not wish my questions to be construed as criticism of the Canadian Penitentiary Service, or its officers. I have nothing but the highest regard for the work you are all doing in the difficult circumstances under which you work. If it was criticism, it was criticism of a system that the public have permitted to evolve in this country, whereby they expect of you the impossible under circumstances as you have outlined them.

Mr. Westlake: I just did not want to lose the opportunity to get on my orange box and express what I feel about what is going on and what the needs of our service are.

Senator Hastings: Speaking of housing inmates, when or how is the section utilized in terms of which you can take a man with a sentence of under two years into a penitentiary?

Mr. Westlake: We now have an agreement, provided for in the legislation, with the various provinces across the country, with the exception of Ontario and Prince Edward Island, whereby inmates who have been sentenced to a federal institution can be transferred to a provincial one, or vice versa. There are two reasons for this. One is that, for example, an inmate in a provincial institution may wish to take advantage of some sort of training opportunity that is not available to him there, and as a result can be transferred to a federal institution where such training is available. The other reason is that if an inmate presents a severe disciplinary problem within a provincial institution, where the authorities feel they cannot cope with him, then he can be transferred to one of our institutions in terms of the agreement between the federal and provincial governments.

I have some figures written down on that, because I thought it might come up.

We have something like 105 federal inmates presently serving time in provincial institutions, and something like

39 or 40 provincial inmates who have been transferred to federal institutions, under this legislation. We have a good number of females in the Prairies, for example, who were sentenced to a federal term in Kingston penitentiary because it is the only one available to them; but through negotiations, the provinces in question consider that they have the resources to cope with these particular individuals, and in order to avoid the necessity of moving them away from their families or their home communities it has been agreed to keep them in the provincial facility.

The same thing applies to a number of our inmates up in the Yukon and the Territories, where we have Eskimos and Indians sentenced to a federal term, but who are retained in provincial institutions primarily because this enables them to remain in their own environment. We therefore end up with a number of inmates in our system who are serving less than the normal two-year sentence.

Senator Neiman: As I mentioned to Mr. Westlake last week, one area that really confuses me is the question of sentencing, particularly in a case where, for instance, a person may be out on parole, is charged with a new offence, is convicted and brought back in. I know this goes beyond your area of concern and jurisdiction to some extent, but I notice that in Miss Hansen's most recent report she gives a number of examples of problems concerning sentencing, and the question of time to serve. I realize that quite often it is a question of judges using their discretion in deciding, when a person is brought back into custody and is sitting in jail awaiting trial, whether that time will be counted as time to serve. This again reflects on the way time is computed once the prisoner gets back under your jurisdiction. I am wondering, in view of the amendments that are now being contemplated, whether there is going to be a system whereby the inmates, as well as the rest of us, as laymen, will be able to understand easily how sentences are computed, how time to serve is computed, and how periods of remission that are going to be statutory or otherwise are computed.

Mr. Westlake: Like you, I am thoroughly confused by all the legislation involving the computation of sentences, and that is why I brought Mr. Carey along this morning. He is one of the people who supposedly can bring some sort of sense to the confusion that exists at times in this area. Perhaps he could field some of these questions.

My personal observation is that this new system of computation, where we have done away with statutory remission and we are dealing simply with days served and remission earned, makes it relatively easy in terms of the administration of computing inmates' sentences. An inmate is going to have more difficulty, probably, projecting his release date on a long-range basis. Right now, when an inmate walks into an institution, within a very few days his sentence has been computed and he knows the earliest possible date he is eligible to be released and what his maximum period of time in the institution will be. He also knows when he is eligible for parole. I do not think the new legislation will change his eligibility for parole, but in terms of being able to project he is going to have to work on the basis that, "I am going to earn my 15 days every month," and that may be a bad assumption. I think, from that point of view, it is going to be more difficult for them, but in terms of understanding, perhaps if you were to address some specific questions to Mr. Carey as examples, we might be able to work our way around it.

Senator Neiman: Well, I came from another meeting and I did not bring Miss Hansen's book with me, but I think the examples they were dealing with concerned inmates who had been out and who had served part of their sentences one way or another and then had been re-convicted and brought back in, and great confusion arose.

Mr. Carey: Well, I will try to give you an idea of how we compute sentences for what we call parole violators. These are inmates who have been released on parole and have had their parole revoked or forfeited after committing an indictable offence. First of all, we have to determine when an inmate is released on parole, and I shall give you an example. If an inmate was sentenced to two years on, say, April 1, 1975, then the warrant expiry date would be March 31, 1977. That would be the full two years. And this is how we determine the parole expiry date. The inmate has to report up to that date. If he has served, let us say, nine months out of that two years, he is therefore on parole for 15 months and there is no remission taken into consideration to arrive at the parole expiry date. This is how we relate the Parole Act to the Penitentiaries Act. If at any point in time the inmate's parole is suspended and he is reincarcerated, he gets credit for the days that he serves while his parole is suspended. Then if his parole is revoked and he becomes a federal inmate again, he is recommitted to penitentiary upon revocation of his parole. The 15 months that he was originally on parole is reduced by the amount that he served under suspension, and on that suspension, if he is incarcerated in a penitentiary, he is credited with the earned remission as it is now, three days per month. Do you follow me?

Hon. Senators: Oh, yes, yes!

Senator Hastings: This is the problem!

Mr. Carey: Then his parole remnant is reduced by the amount of days he served under the suspension, and this becomes his new single term in accordance with section 20 of the Parole Act.

There is another angle to this. After he has been revoked, if it is found that he did commit an indictable offence, then the parole becomes a forfeiture, and we have to determine what the remnant is going to be. He is credited with time served under suspension and with earned remission. He is credited with time served on revocation with statutory remission and earned remission, and deducting all these days, we have to determine what the balance of his original term will be, and in accordance with section 21 of the Parole Act he has to serve both. It is mandatory that he serve the sentence imposed for the indictable offence plus the adjusted remnant of the original sentence. Is that clear enough?

Senator Godfrey: Can I ask just one question? Can you go behind the original sentence?

Mr. Carey: We have to.

Senator Godfrey: Without any new offence? It works out that he can actually be in beyond March 31 just because he has a revocation?

Mr. Carey: That is right. It becomes a new, single term.

Senator Neiman: So the earned remission starts all over again?

Mr. Carey: Oh, yes, it does. It continues on. He continues getting earned remission for the parole suspension as long

as he is incarcerated in a federal institution. He gets earned remission and statutory remission on revocation, and then he gets statutory remission on the sentence that he got for the indictable offence plus the adjusted remnant.

Mr. Hollies: Honourable senators will realize, of course, that Mr. Carey is addressing himself to the situation under the present legislation.

Mr. Carey: That is right.

Senator Hastings: In other words, under the new legislation the one day for two will simplify the matter tremendously, no matter where it is served?

Mr. Hollies: It is a greater change than that, senator. Because now, as Mr. Carey has said, in the event of forfeiture there is an automatic consecutive sentence. There will now no longer be a forfeiture. Judges will be able to order that any sentence be consecutive or concurrent. They can also just be silent, in which case it will be concurrent automatically. There is no necessity for computing a brand new sentence in every case. Time served on parole, which we dealt with the other day, will count towards that. So if he gets no new sentence, he can never be incarcerated beyond the warrant expiry date, because he has either been in custody or he has been on parole—that is, unless he takes off.

Senator Hastings: And one day's remission for two days served simplifies it tremendously, no matter where he serves it.

Mr. Hollies: As long as he is serving it in an institution. Here we come back again to your original thrust.

Senator Hastings: But it will simplify it immensely.

Mr. Hollies: Yes, it will.

Senator Hastings: The sentence will be one of two years or three years, with one day off for every two days served.

Mr. Carey: The workload may be a little heavier, as Mr. Westlake explained a little while ago, and it is going to create quite a little bit of ledger-keeping. But as far as we are concerned it will be a godsend, because the complexity will be eliminated. It will be much easier for us to determine what remissions he is entitled to and what he is not entitled to. At the present time there is an automatic forfeiture for escape. If he gets a following concurrent term it wipes out the forfeiture and he starts anew. So if you have a forfeiture of statutory remission following an escape and then the inmate is sentenced to another concurrent term which takes over, then the forfeiture remission no longer exists; it is subsumed by the concurrent term.

Mr. Hollies: This automatic forfeiture for escape is being eliminated in Bill C-83.

Senator Buckwold: Of course you are going to eliminate one of the greatest challenges facing any inmate, and that is trying to figure out his parole. That is a great way to pass time, they tell me.

Mr. Carey: Well, senator, we thought that back in 1962 with statutory remission and earned remission, and now in 1976, 14 years later, we are still ironing out the bugs from that situation.

Senator Buckwold: Some of the boys are still figuring it out.

The Chairman: Are there any further questions on the proposed amendments to the Penitentiaries Act? If there is none, we can now move on to the proposed amendments to the Prisons and Reformatories Act. Will you speak on that, Mr. Westlake? This is to be found on pages 69 to 71 of the bill.

Mr. Westlake: We do not consider that there is much of a controversial nature in connection with the Reformatories Act. The amendments bring it more or less into line with those contained in the Penitentiary Act. It refers to transfers from penitentiaries to prisons, which just conforms with what is already brought forth in the Penitentiaries Act. It, again, refers to remission, bringing their remission into line with the type of remission system we will have in terms of the abolition of statutory remission, and that is it. There are no other amendments to that act.

One result will be in connection with the fact that now we are operating in the same vein in these areas of transfer of inmates between the two jurisdictions, the computation of sentence with statutory and unearned remissions being the same now. The result of this will be that if an inmate is transferred from one jurisdiction to another, all the rules and regulations applicable in that jurisdiction will apply to him while he is serving his sentence there.

I do not see anything very much beyond that, senators, that is new.

Senator Hastings: One aspect that disturbs me about moving these men from provincial to federal institutions is concerned with the procedure to be used. I hope you are using stringent rules and regulations in accepting inmates serving under one year in your institutions. Who makes those decisions?

Mr. Westlake: It is a joint decision in a region on the part of the regional director in cooperation with the office of the Director of Corrections for the particular province. For example, in the case of an inmate in a provincial institution in Saskatchewan, where the director of the institution felt that he would be unable to cope with that inmate he would put his name forward through the office of the Director of Corrections to be considered for transfer to a federal institution. That application would come forward to our system through our regional officials, who would discuss it with the director of the appropriate institution. A number of documents would have to be provided, including everything from a committal warrant to any other documentation built up to that point in time. A decision would then be taken as to whether or not the inmate would be acceptable to the system. In the event that we did not agree, the inmate would not be transferred.

Senator Hastings: It is a rather easy manner in which to get rid of problems from one institution to another.

Mr. Westlake: Yes.

Senator Hastings: And anyone serving a sentence under two years is not guilty of a very grave offence. I hate to think of moving such persons into your federal pens.

Mr. Westlake: One of the advantages of the system, though, that I could point out, has to do with areas in which we have community correctional centres, to which inmates in some provincial systems do not have access. For example, there may not be one in Calgary—I do not know for sure if that is a good example, but we do have a couple of federal CCCs there. If the authorities desired to move

an inmate in Saskatchewan closer to his family in Calgary, we could move him into one of these facilities.

Senator Hastings: I do not mind that. I am thinking more of moving a person from Calgary jail to Prince Albert penitentiary.

Mr. Westlake: At this point in time it appears to be almost a three-to-one scale of the right way, from the federal system to provincial. We originally saw this as a means of repatriating inmates closer to their families and homes. Naturally, the provincial authorities do have a tendency to consider this to be a method, maybe, of getting rid of some of the troublemakers in their system. Because it is a cooperative type of program, no one can have it all their own way. For example, an incident took place in the Regina jail recently, while I was still in Saskatchewan. A native inmate became involved in drugs. He assaulted a couple of staff members and smashed up an area of the jail pretty badly. They just felt that there was no way that they could contain him there and requested that he be taken into our system. We agreed, and he was moved into Prince Albert. If he cools out in there and we consider him to be suitable for somewhere else, he will be moved again. However, it certainly was never intended, from our point of view at least, that the program would be used to get rid of the troublemakers in the provincial system. It seems with the existing legislation that there is a tendency for the really bad types to end up in the federal system and the others in a provincial system.

Senator Buckwold: Returning to the other field, we should get on the record this hiatus which we encounter when an obvious psychotic serving a fixed term is finally released into society without protection to society. Your psychiatrist would indicate that the inmate is a dangerous man, but his term would have expired and it seems at the moment that really nothing happens except that he is released. In my opinion, this is a really serious weakness in the whole system. Do you have any suggestions as to what might be done, or am I wrong in this assessment that somewhere along the line the law contains a weakness in this regard? I presume the inmate could not be put into a mental institution without someone committing him.

Mr. Westlake: He would have to be certified.

Senator Buckwold: Can your psychiatrist certify the inmate?

Mr. Westlake: It is necessary to have two or three psychiatrists.

Mr. Hollies: It depends on the legislation in the province in which the institution is located. I assume it could be done. This is the subject of an intensive study at the moment, which I will not say will be productive, because I do not think it will be. It was triggered immediately by the Gagnon incident in Calgary. We take the position that so far as detention in the penitentiary system is concerned it cannot be done without some mechanism of returning to the courts, which really means another sentence of incarceration, for which the inmate must commit a further offence. Yet we are cognizant of the fact that we do have timebombs on our hands. Some of them are not even released under mandatory supervision. A case I have in mind took place in Manitoba. The man was sentenced and committed to penitentiary before August 1970, so is not subject to mandatory supervision. He made a very grave

threat against a member of the Department of the Solicitor General. He was looked upon as psychotic. We then, in advance of his release, had the provincial authorities in Manitoba examine him to determine whether he was certifiable. They came to the conclusion that he was not. In the result, senator, exactly what you suggest happens did happen. The man was released. The person against whom he made the threats is still alive and well, but one wonders what the ultimate result will be. We are examining the mental health legislation of each of the provinces to determine whether some mechanism can be devised, either administratively or by changes to the particular legislation, whereby these people upon being identified as threats can be examined and, if necessary, confined under the mental health legislation of the provinces. However, there is nothing within the Penitentiary Act, either actually or in contemplation, that will enable us to extend an inmate's sentence of incarceration solely because two psychiatrists say that he will be dangerous if released.

Senator Buckwold: I agree that the way it is now is good, but it should not provide for the examination in the penitentiary, in which case his sentence would simply be extended. That could be open to abuse if it was left to just two psychiatrists to make the decision to keep him. Do you have any suggestions for amendments to be made to the act which would provide more protection to society? For example, it could be made compulsory for the Penitentiary Service, on the advice of a psychiatrist, to have this matter reviewed by the Attorney General of the home province so that it would not be left in limbo. There should almost be some legal requirement to have notification, at least, go forward to some responsible body to take a look at it from the provincial side.

Mr. Hollies: It would be quite possible to put that in the legislation. Without seeking to be contentious on the point, I wonder whether matters of this kind are more properly dealt with in legislation or by way of commissioner's directives, which he has the power to issue under the Penitentiary Act.

The mechanisms for this, the situations in which it should be done, may conceivably vary from time to time. It may vary with each province, depending on the mental health act of the province. I would think, sir, that either alternative is possible, either to put some requirement into the legislation or to have commissioner's directives issued on it. I have really not addressed my mind to which of those is the preferable course.

Senator Buckwold: This is a fairly important aspect with regard to the protection of society, because we are seeing more and more adverse results of our present system—which, in the end, of course, react on the whole prison system, and then the public demands even tougher regulations.

Mr. Chairman, I am wondering whether you might have one of our staff people think of a possible amendment that might fit into some kind of requirement, or advice at least, to a responsible provincial body, or representative, or department, or minister of labour perhaps, so that a case that is fairly obviously regarded as potentially dangerous could be passed on, or would have to be passed on, to the other party—that is, the provincial body that would be responsible.

Mr. Hollies: I mentioned two ways, senator. There is a third alternative which you may wish to consider. That is to have regulations made by the Governor in Council.

Senator Buckwold: Any of those ways. I am not suggesting just one. I would like to have a little more in-depth look at that aspect.

It might be something that this committee could look at in some detail.

The Chairman: Perhaps our witnesses could tell us of the practices elsewhere. This problem does not exist only in Canada. There are 50 states of the union who face this problem. Do you know of any?

Mr. Hollies: Mr. Chairman, I do not know what the situation is in the United States.

Senator Godfrey: My understanding of the dangerous offenders legislation is that when a man is convicted, he is tried as a dangerous offender—he is not sentenced for his conviction; he is sentenced as a dangerous offender.

What would be wrong, when a man has been sentenced for his original conviction, in charging him at the end of his period, or towards the end of his period of incarceration, when it becomes obvious—or even more obvious than when he was first sentenced—that he is a dangerous offender and that the minute you let him out he is going to be a menace to society? Why should that decision be made before he goes into prison? Why could it not be made at the end—and then go through the courts in the ordinary way? He would be charged, tried by a judge, with all the evidence on what he did when he was in prison. The psychiatric evidence would be brought up at that time, and at that time you might say, "Don't release him."

Mr. Hollies: There are two things—well, basically only one: you may have a man who is doing a 10-year sentence. Perhaps he should have been charged as a dangerous offender at the time of his first conviction. Now, because of his conduct and so forth, he fails to earn any remission. It comes to nine years and you say, "In reviewing his history in the penitentiary, we think that nine years ago he should have been sentenced as a dangerous offender." I think we would get some observations and adverse criticism from the civil liberties people, rightly or wrongly, saying, "It is unfair, in respect of a conviction that occurred nine years ago, to use material found subsequently—when the Crown did not see fit to charge him as a dangerous offender—to now put him in for life." I think it is a question, perhaps, of the time period. At the moment, under the Criminal Code, you must make application to have someone declared a dangerous sexual offender, or an habitual offender, within three months of the time he is convicted. I am not advocating or arguing against your viewpoint, but would you say that 20 years after conviction, for example, a man should have the set term suddenly changed to life imprisonment, or would you put in a limitation to, say, three years afterwards?

Senator Godfrey: I thought about this just three minutes ago, and I am not prepared to answer all your questions. But you have not convinced me with your objection, because I think it is a lot fairer that there might be a postponement of the decision, seeing how he conducts himself. Surely you may be in a much better position than you were originally—just the same way as you are reviewing the dangerous offender, once he is in, periodically—after eight or nine years to decide whether he is a dangerous offender. What is wrong with that, in view of the way he has behaved since? I am not going back nine years. What is unfair about making a decision in view of the evidence that has come up in connection with his behavi-

our since and in view of the fact that, as Senator Buckwold has said, we want to protect society? I am on your side, Senator Buckwold.

Mr. Hollies: I do not think I am really prepared to argue the pros and cons of that, senator. With the greatest respect, I do not think I am competent to do so. However, I would suggest that what you are suggesting is an appeal by the Crown against the original sentence. It is tantamount to that. A man has been sentenced to a fixed term and we now say he should have been sentenced to an indefinite term; so you are going back to have the sentence recast. Whether you term it an appeal by the Crown or otherwise, I suggest it is tantamount to being the same thing. Yet you do not give the man the right to say, "I was sentenced to 25 years. Now, because I have demonstrated what a good inmate I am, how I have reformed, you are saying that the sentence should be changed. Yet I am not going to be eligible for parole for one period during my sentence, of seven years, or whichever is the lesser." So you may wish to have a look at both aspects.

Senator Godfrey: I think it is the opinion of some of us that the dangerous offender should be sentenced for the original crime, and then you add the dangerous offender aspect on to it. What is wrong with adding on the dangerous offender aspect at a later date than at the start? I am merely thinking out loud. I think this is a possible aspect that we should consider.

Mr. Hollies: We would have to look at the considerations, to see how they would work out and whether they are fair or unfair.

The Chairman: Senator Godfrey, this was in substance what you suggested at the committee meeting when the subject of dangerous offenders was discussed.

Senator Godfrey: I was suggesting at that time that you should have a definite sentence plus an indeterminate. I had not thought of the idea of postponing it later to take care of what Senator Buckwold has pointed out—that here you know that a man is going to be released, and if, in 10, 15, or 20 years he is a menace to society, why should you not create something else?

Senator Buckwold: I was thinking more about the case where a man could deteriorate very badly mentally during the course of his sentence. His original crime may not have been particularly serious, but over the course of his sentence, his mental condition deteriorates to the point where he is a dangerous individual. I think that probably happens more often than we think. In those circumstances, it would be somewhat more difficult to institutionalize that individual under the suggestion put forward by Senator Godfrey.

My only point is that there should be some requirement to ensure that a potentially dangerous individual is not released back into society without some authority being notified. At the present time, such individuals are simply given their tickets and out they go.

The Chairman: I agree with you, Senator Buckwold.

Mr. Westlake: We have to subscribe to the principle you are advocating. We have released inmates whom we are extremely concerned about as to what they may do, how they may react, but as the law presently stands, we have no choice but to release them. We do advise the police in the community to which the inmate goes, but again they

cannot supervise these individuals 24 hours a day, just as parolees cannot be supervised 24 hours a day.

Senator Buckwold: What I have in mind is that such individuals may be committed to psychiatric institutions as opposed to being kept in the penitentiaries.

Mr. Westlake: It would probably be easier to get such individuals into the penitentiaries than it would be to have them committed to mental institutions.

Senator Buckwold: But I am talking about the provincial authority.

Senator Hastings: You mentioned one case where application was made. Have you ever been successful in such applications?

Mr. Hollies: I cannot say, senator, because I was only involved in that one particular case. It came to me on a personal basis. It could very easily have gone to the Penitentiary Service and I would not be aware of it.

Perhaps Mr. Westlake can comment on that.

Mr. Westlake: I know of no cases.

Senator Hastings: I know that the respective provincial authorities are very reluctant to certify such individuals when the Canadian Penitentiary Service applies for orders.

Mr. Westlake: We had a case in Saskatchewan within the last six months where we endeavoured to get an individual certified. In that case, the application was rejected and we had no alternative but to release the individual. What has happened to him in the interim, I do not know.

Senator Hastings: Dealing with segregation, or solitary confinement, that is resorted to where a man is, or is likely to be, dangerous to himself or to those around him, and yet you say you have released inmates directly from solitary confinement to the outside.

Mr. Westlake: That is right. Under the present law, we have no option but to do so. The only other alternative is that if an inmate committed some act during his period of incarceration that could be considered in the vein of dangerousity, under the proposed legislation he could be so charged, and perhaps convicted, notwithstanding that he is an inmate of an institution. That, however, would be more the exception than the rule. The individuals we are talking about now are those who perhaps do not do too much while inside, but who we know will be real threats to society once they are released.

Senator Hastings: But the dangerous offender legislation is after the fact. What we are saying is that the inmate's conduct in custody should be a factor in determining whether or not he should be released. If he commits an offence while in custody, or his conduct while in custody is such that it is obvious he is a dangerous offender, he should be brought back before the courts.

Mr. Charette: It is very often the case that a dangerous offender, once he enters the institution, will remain quiet and well behaved, but we know that as soon as he is released he will once again become a danger to society.

As I understand it, there are on-going discussions with the provinces in an attempt to deal with the problem of the dangerous offender.

Mr. Hollies: An individual may have a predilection to heterosexual rape, something which he is unable to indulge in while in prison but may very well once he is released.

Senator Neiman: I find it almost impossible to conceive of an inmate being released directly from solitary confinement, or segregated confinement, right out on to the street. If an inmate is dangerous to himself, or to others, to the extent that he has to be kept in solitary confinement, then surely there should be some transition period for that individual before he is released out on to the streets?

Mr. Westlake: To use an hypothetical case, if we have an inmate who has been in segregation for an extended period of time and we know that three months from now, or six months from now, he is due to be released, certainly there would be an effort made to try to work him back into normal associations within the institution. However, if during that period he commits another offence, such as assaulting an officer or another inmate, then we would have no alternative but to place him back in segregation.

Senator Neiman: If he commits an assault, can he not then be charged and sentenced? This is what I think we should be looking at. An inmate who assaults a guard or another inmate two days before his release date simply should not be released.

Mr. Westlake: Under present circumstances, if an inmate commits a serious offence, our instructions are that the director should consult with the local police or crown attorney's office with a view to having a charge laid, in which event the inmate is dealt with by the courts.

Unless it is a fairly serious incident, that course is not followed. For example, the courts no longer look upon the fact that an inmate punched a guard as a serious offence, any more than if a policeman gets punched in the eye during the course of a fight on the street. The courts simply do not hand out lengthy jail sentences to persons charged with common assault.

Senator Neiman: But hearing in mind why the inmate was placed in solitary confinement in the first place, surely he has to be judged in the eyes of the director as being fit to be put back into the mainstream of the prison population.

Mr. Westlake: Even where an inmate who has been in segregation for an extended period of time is put back into normal prison association for the last three months or six months of his sentence, most of them are prepared to play the role for that period in order to ensure their release.

Senator Neiman: But that at least sounds a little better than taking somebody directly from solitary confinement and placing them on the street. I quite understand that many of them would play the role and be extremely well behaved during the period they are inside.

Mr. Westlake: It is possible that an inmate could be released from segregation to the street, but that certainly is not the rule.

Mr. Carey: Another factor is that once an inmate has served his sentence we are legally bound to release him; there is no leeway.

The Chairman: Are there any other questions?

Senator Buckwold: To conclude this theme, Mr. Chairman, it is my hope that Mr. du Plessis, or someone, will think about this situation with a view to a possible amendment to take care of what we have been discussing.

Senator Laird: Perhaps I might interject, Mr. Chairman, to fortify Senator Buckwold in his concern, recalling to you the well-known situation surrounding the Manson "family", where it is said in the authentic book, "Helter Skelter", that even though he is now removed from circulation, his hypnotic powers, or whatever they were, are still with members of the so-called "family". Of course this was demonstrated by Squeaky Fromme who tried to assassinate the President.

The Chairman: I believe we have now concluded our preliminary examination of this bill. As I recall it, we were going to get some additional parole statistics. I believe there were some questions left on statistics and there were some figures to be submitted.

Mr. Charette: Mr. Chairman, I spoke to the Vice-Chairman of the National Parole Board late Thursday afternoon, and he was completing some statistics at that point. I understood he was going to send them on Friday.

Mr. R. B. Macauley, Legal Adviser, National Parole Board: This envelope is addressed to Senator Hastings, pertaining to questions he raised.

Mr. Westlake: You raised several other questions as well, senator. Did you get the information you were requesting?

The Chairman: May I open an envelope addressed to you, senator? I will pass this on to you, and you might take a look at it.

Senator Hastings: Is it for the record?

The Chairman: I do not know; it ends with personal regards to you.

Senator Laird: Is it signed "L76321"?

Senator Hastings: I had asked for the eight forfeitures, with reference to men who had been convicted of murder and had their paroles forfeited. It is not for the record.

The Chairman: The committee will now adjourn until 2.30 p.m., when we will begin to look at some of the recommendations emerging from our discussions on the bill.

You have a document prepared by Mr. Finsten, our research officer, entitled "Comments on Bill C-83 raised at Senate committee proceedings." I would ask senators to take a look at this document before meeting this afternoon, if possible.

I do not believe we will need the officials here this afternoon. Thank you very much for your help, gentlemen.

The committee adjourned.



Government
Publications

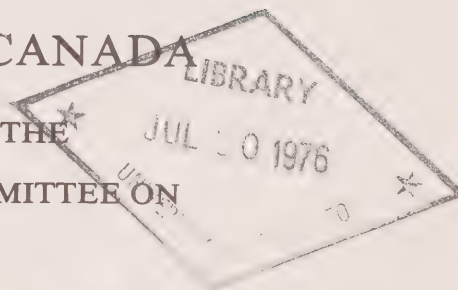
FIRST SESSION—THIRTIETH PARLIAMENT

1974-75-76

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON



LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 41

THURSDAY, MAY 13, 1976

Sixth Proceedings on:

“The Subject matter of Bill C-83 intituled:
‘An Act for the better protection of Canadian
society against perpetrators of violent and other crime’.”

INTERIM REPORT

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(19)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, 4th March, 1976:

The Honourable Senator Perrault, P.C., moved seconded by the Honourable Senator Langlois:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the subject-matter of the Bill C-83, intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime", in advance of the said Bill coming before the Senate, or any matter relating thereto: and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, April 6, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m., the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Croll, Flynn, Godfrey, Hastings, Laird, Langlois, McGrand, McIlraith and Neiman. (11)

Present but not of the Committee: The Honourable Senators Bourget and Lucier. (2)

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee considered proposed recommendations for its Interim Report on the subject matter of Bill C-83 "An Act for the better protection of Canadian society against perpetrators of violent and other crime".

On direction of the Chairman, evidence of this afternoon's meeting will not be printed in this day's proceedings but photocopies of the evidence will be made available to members of the Committee.

At 4:40 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Tuesday, April 27, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:30 a.m., the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Flynn, Hastings, Laird, McGrand and McIlraith. (7)

Present but not of the Committee: The Honourable Senator Lucier.

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its consideration of proposed recommendations for its Interim Report on the subject-matter of Bill C-83 "An Act for the better protection of Canadian society against perpetrators of violent and other crime".

At 12:10 p.m. the Committee adjourned until 2:30 p.m.

At 2:30 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (*Chairman*), Choquette, Flynn, Godfrey, Hastings and Laird. (6)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee considered additional proposals for recommendations for its Interim Report on the subject-matter of Bill C-83. After discussion it was agreed that Mr. du Plessis would prepare draft revisions of some of the recommendations discussed today for submission to the Committee at its next meeting.

At 5:00 p.m. the Committee adjourned until Tuesday, May 4, 1976.

ATTEST:

Tuesday, May 4, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:35 p.m., the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Croll, Flynn, Godfrey, Laird, Langlois, McIlraith and Smith (*Colchester*). (9)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. R. L. du Plessis, Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee resumed its consideration of proposed recommendation for its Interim Report on the subject-matter of Bill C-83 intituled "An Act for the better protection of Canadian society against perpetrators of violent and other crime".

The Committee discussed additional draft recommendations prepared by the Law Clerk and suggested that further changes be included in a new draft for review at the Committee's next meeting.

At 5:00 p.m. the Committee adjourned until Tuesday, May 11, 1976.

ATTEST:

Tuesday, May 11, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m., (*in camera*), the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Flynn, Godfrey, Laird, Langlois, McParrath, Neiman, Robichaud and Smith (*Colchester*). (10)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. R. L. du Plessis, Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its consideration of proposed recommendations for an Interim Report on the subject-matter of Bill C-83 intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime".

The following witnesses provided explanations on some recommendations contained in the final draft examined by the Committee:

Mr. Alexander A. Sarchuk, Q.C., Special Counsel to the Department of Justice;

Mr. R. B. Macauley, Legal Adviser, National Parole Board.

After discussion, the question being put, it was *Agreed* that the Chairman do table in the Senate this week an Interim Report on the subject-matter of Bill C-83 incorporating the Recommendations approved by the Committee at this day's meeting. The Interim Report is attached to these Minutes, and is printed in this day's proceedings.

At 4:20 p.m. the Committee adjourned until Tuesday, May 18, 1976.

ATTEST:

Denis Bouffard,

Clerk of the Committee.

Interim Report of the Committee

Thursday, May 13, 1976

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred the subject-matter of Bill C-83, intituled: "An Act for the better protection of Canadian society against perpetrators of violent and other crime", has, in obedience to the Order of Reference of Thursday, March 4, 1976, undertaken a preliminary examination of the said subject-matter and now presents an Interim Report as follows:

1. FIREARMS AND OTHER OFFENSIVE WEAPONS

(Clause 3, pages 2-37)

In its preliminary examination of Bill C-83, your Committee notes that the proposed new Part 11.1 of the *Criminal Code*, in Clause 3 of the Bill, which would replace all the provisions of the *Criminal Code* under the heading "Offensive Weapons", would add to the *Criminal Code* provisions that are regulatory and administrative rather than provisions of a criminal law nature, for example, the establishment of a licensing system and provisions relating to the carriage, handling and storage of firearms. Your Committee questions whether such provisions properly belong in the *Criminal Code*.

In this connection, your Committee draws attention to the following statement in a recent report, issued by the Law Reform Commission of Canada, entitled "Our Criminal Law".

"If criminal law's function is to reaffirm fundamental value, then it must concern itself with "real crimes" only and not with the plethora of "regulatory offences" found throughout our laws. Our Criminal Code should contain only such acts as are not only punishable but also *wrong*—acts contravening fundamental values. All other offences must remain outside the Code.

Nor is this classification a mere formality. It is not just calling some offences "crimes" and putting them in the Code and calling others "violations" or some other name and putting them somewhere else. Rather, it means dealing with the two under two distinct regimes. Real crimes need a criminal régime, violations a non-criminal régime."

2. USE OF WEAPON DURING COMMISSION OF AN OFFENCE

(Clause 3, page 11)

Your Committee notes that the use of a weapon during the commission of an offence will be an offence under the proposed legislation, but your Committee is also concerned with the possibility that serious consequences may occur when a person is in possession of a weapon during the commission of an offence, whether or not he intends to use it.

It is, therefore, recommended that consideration be given to amending the proposed new section 98, in clause 3 of the Bill, by adding thereto a provision that anyone who has upon his person an offensive weapon while committing or attempting to commit an indictable offence or during his flight after committing or attempting to commit an indictable offence, whether or not he intends to use it to cause bodily harm to any person, is guilty of an indictable offence and is liable to imprisonment for five years or is guilty of an offence punishable on summary conviction.

Your Committee also recommends that it be further provided in the proposed new section 98 that where one of two or more persons, with the knowledge and consent of the rest, has an offensive weapon upon his person while committing or attempting to commit an indictable offence or during his flight after committing or attempting to commit an indictable offence, it shall be deemed to be upon the person of each and all of them.

3. DANGEROUS USE OF FIREARMS

(Clause 3, page 12)

Your Committee recognizes that the practice of using and storing firearms varies greatly in different regions of the country. In those areas where firearms are part of the everyday life of the residents, the use of firearms is accompanied by a knowledge of, and respect for, its dangers. In such regions it may be both difficult and unnecessary to take the precautions that in other regions, particularly in urban areas, would be reasonable and desirable.

It is, therefore, recommended that consideration be given to amending the proposed new subsection 99(2), in clause 3 of the Bill, by adding thereto a requirement that local circumstances, traditions and practices be taken into consideration by the courts when determining whether a firearm or ammunition has been used or stored in a careless manner or without taking reasonable precautions for the safety of other persons.

4. NOTIFICATION OF INTERCEPTED COMMUNICATION

(Clause 10, page 40)

Your Committee is of the opinion that the provision in the present legislation requiring notification to a person who has been the object of an intercepted communication should not simply be repealed, but should be replaced by a provision that would ensure that the required notification does not interfere with proper investigation by law enforcement authorities or the activities of organized crime and professional criminals.

It is, therefore, recommended that consideration be given to a provision that would amend the proposed new section 178.23, in clause 10 of the Bill, to permit a judge to grant one extension not exceeding 90 days of the period

within which notification is required and to permit two judges to grant any additional extensions of that period or to eliminate entirely the requirement for notification.

5. REVIEW FOR PAROLE

(Clause 11, page 46)

Your Committee draws attention to the proposed new section 695.1, in clause 11 of the Bill, which provides that, where a person has been found to be a dangerous offender and has been sentenced for an indeterminate period, the case will be reviewed by the National Parole Board within three years after the person was taken into custody and, thereafter, not later than every two years for the purpose of determining whether the person should be granted parole.

Under this provision, where a sentence has been imposed for an offence and the minimum period that must be served before eligibility for parole is longer than three years, it is possible for the person who was convicted of the offence and who was found to be a dangerous offender to be released sooner than another person who was convicted of the same offence but who was not found to be a dangerous offender.

Your Committee, therefore suggests that consideration be given to an amendment to the Bill that would provide that where a person has been convicted of an offence and has been found by the Court to be a dangerous offender the person would be required to serve a determinate sentence for the offence followed by an indeterminate sentence as a dangerous offender.

Your Committee also recommends that the Bill be further amended to provide that where a person has been sentenced for an indeterminate period as a dangerous offender, the National Parole Board shall, for the purpose of determining whether the person should be granted parole under the *Parole Act*, review the case not later than the end of the period required to be served for the offence for which the person has been sentenced before becoming eligible for parole, or three years, whichever is longer.

6. TRANSITIONAL

(Clause 12, page 47)

Your Committee is of the opinion that because of the significant differences between the present law in respect of habitual offenders and dangerous sexual offenders and the provisions in Bill C-83 in respect of dangerous offenders a review should be carried out with respect to all such offenders who are at the present time in custody under sentences of detention to determine which inmates do not fall within the terms of the description of a dangerous

offender in paragraphs 688(a) and (b) in clause 23 of the Bill. Such inmates should be released if they have served a reasonable period of time in prison for the offences they committed.

7. SPECIAL APPLICATION OF REGULATIONS

(Clause 23, page 60)

Your Committee understands that the proposed new subsection 9(2) of the *Parole Act*, added by clause 23 of the Bill, is a transitional provision intended to provide for the application of regulations in various provinces as and when the parole boards in those provinces are appointed and become operative, pursuant to the proposed new section 5.1 of the *Parole Act* in clause 20 of the Bill. Your Committee, however, is concerned that the transitional nature of this provision is not reflected in the Bill.

Your Committee, therefore, would like to see the proposed new subsection 9(2) of the *Parole Act* amended so that its effect would be limited to the period of time and the circumstances for which it is intended since your Committee considers that it would be undesirable and could be discriminatory if a regulation governing parole were to be applied, after the transitional period, to inmates in certain regions of the country and not to inmates generally in all parts of the country.

8. PERSONAL INTERVIEW FOR PAROLE

(Clause 25, page 61)

Your Committee is of the opinion that consideration should be given to amending clause 25 of the Bill by adding a provision that would give an inmate the right to a personal interview following his application for parole to the National Parole Board at the time that he first becomes eligible for parole.

9. PAROLE BY EXCEPTION

Your Committee notes that the National Parole Board will no longer be permitted, where special circumstances exist, to grant parole by exception to an inmate before the inmate's eligibility date has been reached, as is now provided for by regulation.

Your Committee is of the opinion that the National Parole Board should retain this right, which, although exercised infrequently, permits flexibility in those situations where parole by exemption is warranted.

Respectfully submitted,

H. CARL GOLDENBERG,
Chairman.

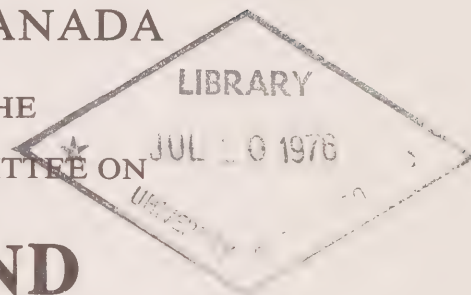


FIRST SESSION—THIRTIETH PARLIAMENT
1974-75-76

Government
Publications

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON



LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 42

TUESDAY, JUNE 29, 1976

Seventh and Final Proceedings on the Green Paper entitled:

“Members of Parliament and Conflict of Interest”

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
*Flynn	Neiman
Godfrey	*Perrault
Goldenberg	Prowse
Hastings	Riel
Hayden	Robichaud
Laird	Smith (<i>Colchester</i>)
	Walker—(19)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 10, 1975:

With leave of the Senate,

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Petten:

That the Green Paper entitled "Members of Parliament and Conflict of Interest", tabled in the Senate on Wednesday, 9th April, 1975, be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, May 18, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:40 p.m. (*in camera*), the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Flynn, Godfrey, Laird, Langlois, McGrand, McIlraith, Neiman and Smith (*Colchester*). (11)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee resumed its consideration of proposed recommendations for the Committee's Report on the Green Paper on "Members of Parliament and Conflict of Interest".

The Committee discussed the draft alternative recommendation on Proposal 3 of the Green Paper as prepared by the Honourable Senators Neiman and Smith and by Mr. du Plessis and Mr. Finsten.

At 4:10 p.m. the Committee adjourned until Tuesday, May 25, 1976.

ATTEST:

Tuesday, May 25, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:40 p.m. (*in camera*), the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Flynn, Godfrey, McIlraith, Neiman, and Smith (*Colchester*). (7)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; and Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its consideration of proposed recommendations for the Committee's Report on the Green Paper on "Members of Parliament and Conflict of Interest".

New draft proposals prepared by Mr. du Plessis and Mr. Finsten were discussed by the Committee and improvements in wording were suggested in certain instances.

At 4:25 p.m. the Committee adjourned until Tuesday, June 1, 1976.

ATTEST:

Tuesday, June 1, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m. (*in camera*), the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Flynn, Godfrey, Langlois, McIlraith, Neiman, Robichaud and Smith (*Colchester*). (10)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; and Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its consideration of proposed recommendations for its Report on the Green Paper on "Members of Parliament and Conflict of Interest".

The Committee reviewed the wording of Proposal 3 which had been approved at its meeting of June 18, 1976.

At 4:40 p.m. the Committee adjourned until Wednesday, June 2, 1976 at 2:00 p.m.

ATTEST:

Wednesday, June 2, 1976

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:10 p.m. (*in camera*), the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Flynn, Godfrey, Langlois, and Smith (*Colchester*). (6)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its consideration of proposed recommendations for its Report on the Green Paper on "Members of Parliament and Conflict of Interest".

At 4:00 p.m. the Committee adjourned until Tuesday, June 8, 1976.

ATTEST:

Tuesday, June 8, 1976

Pursuant to adjournment and notice, the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:35 p.m. (*in camera*), the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Flynn, Godfrey, Laird, Langlois, McIlraith, Neiman and Robichaud. (10)

Present but not of the Committee: The Honourable Senators Green and Haig.

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its consideration of proposed recommendations for its Report on the Green Paper on "Members of Parliament and Conflict of Interest".

At 4:00 p.m. the Committee adjourned until Tuesday, June 8, 1976.

ATTEST:

Tuesday, June 15, 1976

Pursuant to adjournment and notice, the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:05 p.m. (*in camera*), the Honourable Senator H. Carl Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Croll, Flynn, Godfrey, Laird, Langlois, McIlraith, Neiman and Smith (*Colchester*). (10)

Present but not of the Committee: The Honourable Senators Greene and Haig. (2)

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its consideration of proposed recommendations for its Report on the Green Paper on "Members of Parliament and Conflict of Interest".

After discussion, it was agreed that Mr. du Plessis will prepare for the next meeting a draft Report, incorporating all the Recommendations approved by the Committee at its earlier meetings, for final discussion and approval.

At 4:05 p.m. the Committee adjourned until Tuesday, June 22, 1976.

ATTEST:

Tuesday, June 22, 1976

Pursuant to adjournment and notice, the Standing Senate Committee met this day at 2:10 p.m. (*in camera*), the Honourable Senator Goldenberg presiding.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Flynn, Godfrey, Langlois, Neiman and Riel. (8)

Present but not of the Committee: The Honourable Senator Greene.

In attendance: Mr. R. L. du Plessis, Q.C., Law Clerk and Parliamentary Counsel; Mr. Hugh Finsten, Research Officer, Research Branch, Library of Parliament.

The Committee continued its consideration of proposed recommendations for its Report on the Green Paper on "Members of Parliament and Conflict of Interest".

After discussion, it was *Resolved* that the draft Report of the Committee examined at this day's meeting, including amendments and recommendations proposed by Members present, be approved as being the Report of the Committee on the Green Paper on "Members of Parliament and Conflict of Interest". The motion being put, the motion was declared carried.

The Report is printed in this day's proceedings.

At 3:55 p.m. the Committee adjourned at the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Tuesday, June 29, 1976

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred the Green Paper entitled "Members of Parliament and Conflict of Interest," tabled in the Senate on April 9, 1975, has, in obedience to the order of reference of April 10, 1975, examined the same and now reports as follows:

Your committee endorses the principles and objectives set forth in the Green Paper.

With respect to some of the specific proposals and related clauses of the "Discussion Draft of Independence of Parliament Act," your committee finds that they require amendment for purposes of clarification and effective application and, therefore, recommends as follows:

PROHIBITED FEES

(Green Paper, Proposal 3)

Your committee considers that the provision relating to prohibited fees set out in Proposal 3 and recommended for incorporation in the Rules of the Senate should more properly be part of a code of conduct for Senators, discussed later in this report, rather than a rule of the Senate since it specifies a practice that Senators should observe in their conduct inside and outside the Senate rather than a rule of procedure in the Senate.

In addition, your committee considers that this provision, as set out in the Green Paper, should be more specific in its wording if it is to serve as a precise and effective rule of conduct designed to eliminate conflict of interest situations. Accordingly, your committee recommends that this provision, as a rule for Senators, be amended to read as follows:

"(1) A Senator shall not

(a) advocate, support or promote any matter, thing, cause or course of action in the Senate or among Senators or Members of the House of Commons, or

(b) intercede with public servants or government bodies in respect of any matter, thing, cause or course of action,

if,

(c) in return for so advocating, supporting, promoting or interceding, the Senator is paid or accepts a sum of money, fee or other reward, or

(d) the Senator acts as an adviser or consultant to, or is employed in any other capacity by, any individual, firm or corporation that has a direct pecuniary interest in such matter, thing, cause or course of action or is a director, officer or manager of the corporation.

(2) A Senator shall not represent any individual, firm or corporation before a federal board, commission or other tribunal in a matter in which a right or interest of

that individual, firm or corporation is subject to a decision or order of an administrative nature if,

(a) in return for so representing that individual or corporation, the Senator is paid or accepts a sum of money, fee or other reward, or

(b) the Senator acts as an adviser or consultant to, or is employed in any other capacity by, that individual, firm or corporation or is a director, officer or manager of the corporation."

INCOMPATIBLE OFFICES

(Green Paper, Proposal 5)

1. Prohibited Federal Offices

(Draft Act, subclause 10(d))

Your committee is of the opinion that the prohibition against Members or Senators holding federal offices should be a prohibition relating to the remuneration for such offices. The *Senate and House of Commons Act*, paragraph 10(a), prohibits a Member of the House of Commons from holding any office, commission or employment with the federal government to which remuneration of any kind is attached. No such prohibition is now applicable to Senators.

Your committee, therefore, recommends that subclause 10(d) of the discussion draft, which is part of a list of prohibited offices, be reworded as follows to include the underlined words:

"(d) any office, commission or employment whereby the occupant or holder thereof is appointed by or under the authority of the Governor in Council, the Treasury Board, any Minister or other officer of the Crown or any department, agency or corporation set out in any of the schedules to the *Financial Administration Act*, under any enactment or otherwise to which any salary, fee, wage, allowance, emolument, or profit of any kind is attached;"

Your committee further recommends that, if this recommendation to include the underline words is adopted, a provision be added to clause 10 to ensure that where a Member or Senator occupies a federal office, commission or employment to which no remuneration is attached, the Member or Senator is not precluded from receiving an allowance for expenses reasonably incurred in the discharge of the duties of that office, commission or employment.

2. Prohibited Provincial Offices

(Draft Act, subclause 10(f))

Your committee is of the opinion that not every office, commission or employment under the authority of a provincial government, if occupied by a Member or Senator, would violate the concept of the division of powers be-

tween the federal and provincial jurisdictions. Your committee, therefore, considers that a Member or Senator should be permitted to accept a provincial office, commission or employment if it is of a temporary nature or is an office, commission or employment to which no remuneration is attached and if it does not in any way involve the federal government.

Your committee also suggests that the word "commission" be added to the first line of subclause 10(f) of the discussion draft so that this clause will be consistent with subclause 10(d).

Your committee, therefore, recommends that clause 10 be redrafted in part as follows:

"10. (1) No Member or Senator shall hold any of the following offices, commissions or employments:

(f) any office, commission or employment under the authority or control of a province of Canada or under the jurisdiction or control of any foreign government.

(2) Subsection (1) does not prohibit a Member or Senator from holding an office, commission or employment referred to in paragraph (f) if

(a) it is of a temporary nature or it is an office, commission or employment to which no remuneration is attached, and

(b) the duties or functions of the office, commission or employment do not in any way relate to matters that involve the federal government."

3. Elected Public Office

Your committee concurs with the recommendation of the House of Commons Standing Committee on Privileges and Elections that there be a specific prohibition against Senators and Members of the House of Commons holding elected public office under the authority or control of a provincial or municipal government.

Your committee also agrees with that committee's further recommendation that a Senator or Member of the House of Commons be required to resign all other elected public offices within a period of six months from the date of his appointment or election, as the case may be, in order to continue to be eligible to retain his or her seat in Parliament.

GOVERNMENT CONTRACTS

(*Green Paper, Proposal 9*)

1. Prohibited Contracts

(*Draft Act; clauses 2 and 3*)

Clause 3 of the discussion draft provides that "no Member or Senator shall participate, directly or indirectly, in any government contract". Clause 2 defines the word "participate" as meaning, among other things, "having a beneficial interest in the contract . . . being a shareholder, an officer, a director . . . of a corporation that is a party to the contract or . . . being the spouse of a person who is a party . . . to the contract".

Your committee considers that, since each meaning of the word "participate" in clause 2 is modified in clause 3 by the word "indirectly", the use of that word in clause 3 gives the clause a meaning that, when applied to certain situations, is too wide and imprecise. Your committee believes, for example, that there is no reason to distinguish between a direct and an indirect beneficial interest

in a government contract. The use of the word "indirectly" in clause 3 also produces an absurdity when read with other meanings of the verb "participate". For example, how could a person be "indirectly" an officer or a director of a corporation that is a party to a government contract or how could a person be "indirectly" the spouse of a party to the contract?

Your committee is also of the opinion that a Senator is not in a conflict of interest situation merely because he is a shareholder or a director of a corporation that is a party to a government contract or whose wholly-owned subsidiary is a party to the contract.

Your committee, on the other hand, considers that it should be provided in the proposed legislation that there is a conflict of interest situation if a Senator owns 5 per cent or more of the shares of a corporation that has a government contract or whose subsidiary, whether wholly-owned or not, is a party to the contract, if the Senator's spouse or dependent child is a party to or owns 5 per cent or more of such shares, or if the Senator and the Senator's spouse and dependent child have a combined holding of 5 per cent or more of such shares.

Your committee also considers that it should be provided that there is a conflict of interest situation if a Senator is an officer or manager of a corporation that is a party to the contract or whose subsidiary, whether wholly-owned or not, is a party to the contract.

Your committee also considers that there is a conflict of interest when a Senator who is a director of a company intercedes with public servants or government bodies on behalf of that company in any matter in which that corporation has a direct pecuniary interest, and it is for this reason that your committee has recommended, in respect of proposal 3, that Senators be specifically prohibited from so interceding.

Your committee, therefore, recommends that the words "directly or indirectly" be deleted from any general prohibition, such as the one set out in clause 3 of the discussion draft, that the substantive provisions set out in the definition "participate" be incorporated in clause 3 and that it be provided in clause 3, at least in so far as that clause applies to Senators, that a Senator contravenes the Act if, in relation to a government contract,

(a) the Senator is party to or has a beneficial interest in the contract,

(b) the Senator is an officer or manager of a corporation that is a party to the contract or whose subsidiary is a party to the contract,

(c) the Senator owns 5 per cent or more of the shares of a corporation that is a party to the contract or whose subsidiary is a party to the contract,

(d) the Senator's spouse or dependent child is a party to or owns 5 per cent or more of the shares referred to in paragraph (c), or

(e) the Senator and the Senator's spouse and dependent child have a combined holding of 5 per cent or more of such shares.

2. Permitted Participation

(*Draft Act, subclause 4(2)*)

Subclause 4(2) of the draft Act permits a Member or Senator to participate in government contracts if the amounts paid or to be paid pursuant to the contracts do not exceed in the aggregate the sum of \$1,000 in any fiscal

year. Your committee agrees with the recommendation of the House of Commons Standing Committee on Privileges and Elections that this exemption of \$1,000 be increased to \$5,000.

Your committee, however, draws attention to the fact that, even with such an exemption, the prohibition in clause 3 of the draft Act could create problems in outlying areas where the only available supplier of essential goods or materials is a business in which a Member or Senator has a substantial interest.

3. Knowledge of Participation in Government Contracts

Your committee is aware that, because of the large number of contracts entered into annually by various government departments, corporations and agencies, it can sometimes be difficult for a Member or Senator to know whether or not a company in which he owns 5 per cent or more of the shares has entered into a government contract.

Your committee believes that this problem can best be met by the diligence of Members or Senators in keeping themselves informed of the activities of those companies in which they, their spouses or dependent children have combined or separate holdings of 5 per cent or more of the shares.

4. Broadcasting Licenses

Your committee notes that the Green Paper does not deal with the question of whether or not a Member or Senator should participate in or derive any benefit from licences for television, radio and cable television issued by the Canadian Radio-Television Commission.

There would appear to be some inconsistency in prohibiting a Member or Senator from participating in government contracts and yet permitting such a Member or Senator to own or have a substantial interest in a broadcasting undertaking or to participate in an application for a licence issued by the CRTC which in many cases, has an intrinsic value many times more than the suggested \$5,000 exemption mentioned above with respect to government contracts.

Your committee notes that there is a provision in the *Broadcasting Act* for the Governor in Council to issue directions to the CRTC respecting the classes of applicants to whom broadcasting licences may not be issued. Your committee believes that consideration should be given to the question of whether or not Members or Senators should be included in such a class. Your committee further suggests that a review of the other legislation involving the granting of licences be considered for the purpose of determining whether a similar question arises.

FINANCIAL INTERESTS

(*Green Paper, Proposal 15*)

Your committee concurs with the recommendation of the House of Commons Committee that an office of Registrar be established. The Registrar for the Senate would receive the disclosures that Senators would be required to file under the Rules of the Senate and the proposed Act. He would also on request give advice, either verbally or in writing, provide Senators with information on matters of conflict of interest and issue a set of forms for the use of Senators. The committee further recommends that the Clerk of the Senate be appointed as the Registrar for the Senate.

Your committee recommends that every Senator be required, within six months of assuming office or within six months after the coming into force of any legislation relating to conflict of interest and on May 31st of each year thereafter, to file with the Registrar a list of the companies in which the Senator, or the Senator's spouse or dependent child, has a beneficial interest through the holding of shares or has an interest as a holder of bonds, debentures or other securities (*excluding bonds, debentures and notes issued or guaranteed by the government of Canada, a province or any other public body in Canada*) either in an individual capacity or through a private investment company, a partnership or a trust the Senator has an interest.

As recommended by the House of Commons Committee, such disclosure would be made to the Registrar on a confidential basis and would not be made public, except under the terms of a court order or on the request of a Senate committee investigating a specific allegation of conflict of interest.

Your committee agrees with the recommendation in Proposal 10 of the Green Paper, as set out in subclause 7(1)(b) of the discussion draft, that all Members and Senators be required to register annually with the Clerk of the House or the Clerk of the Senate, as the case may be, a list of those companies of which they are officers, directors or managers. Your committee recommends that there also be a requirement to disclose the number of shares held by Members or Senators in such companies. Your committee also agrees with the suggestion in the Green Paper that there be public access to this information.

Your committee has considered the suggestion that Senators be required to file copies of their annual income tax returns but does not feel that this would serve any useful purpose. In the report of the Joint Committee of the Australian Senate and House of Representatives on Pecuniary Interests of Members of Parliament (*September, 1975*), it was concluded that the filing of income tax returns "would constitute neither an adequate nor an appropriate form of registration of pecuniary interests". Among other reasons, the Australian Joint Committee felt that such disclosure would lower the confidence of the general public in the observance of the secrecy requirements of the income tax legislation.

Your committee, therefore, recommends that a Senator be required to produce a copy of his income tax return only if requested to do so by a Senate committee investigating a specific allegation of conflict of interest.

SANCTIONS AND ADMINISTRATION

(*Green Paper, Proposals 18 and 21*)

1. Public Recourse

(*Draft Act, clause 16*)

Your committee is of the opinion that the provision in the draft Act allowing public recourse where the Attorney-General of Canada has failed or refused to institute proceedings could lead to many frivolous applications and should be deleted. Since the Green Paper provides that the Act is to be enforced by the Attorney-General of Canada who is responsible to Parliament and since a member of the public may at any time approach a Member or Senator from his area or communicate with the chairman of the appropriate Committee on Privileges established pursuant to Proposal 21 if that person considers that there has been a violation of the law, your committee is of the opinion

that this is sufficient to provide a proper balance between the need to preserve the integrity of Senators and the need to ensure that there is adherence to the provisions of the legislation relating to conflict of interest.

2. Committee on Privileges

Your committee is of the opinion that consideration be given to the establishment of an appropriate standing or special Senate committee, or a subcommittee of the Senate constituted as a committee of the whole on privileges, whose terms of reference in relation to matters of conflict of interest would, pursuant to the suggestion contained in Proposal 21 of the Green Paper, be

- (a) to investigate all questions of conflict of interest referred to it by the Senate,
- (b) to provide Senators on request with advisory opinions, and
- (c) to advise the Senate, from time to time, of any changes that in its opinion are needed in conflict of interest legislation.

CODE OF CONDUCT

Certain proposals in the Green Paper contain recommendations for rules that would serve as basic guidelines

to be observed by Members and Senators in avoiding conflict of interest situations. Such rules relate to the conduct of Senators outside the Senate and, as such, could not properly form part of the rules of procedure in the Senate. Proposal 3, which relates to prohibited fees and Proposal 17, which relates to the management of private investments and the use of confidential information, are two such recommendations.

Your committee recommends that consideration be given to the drafting of a code of conduct that would incorporate these and other recommendations of a like nature. Such a code could form an essential adjunct to the Rules of the Senate and could serve as a guide to any committee investigating a conflict of interest situation in which the principles embodied in the code are alleged to have been violated.

Respectfully submitted.

H. Carl Goldenberg,

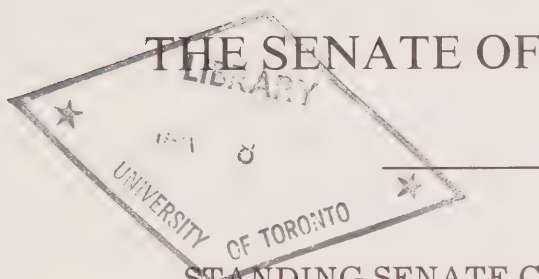
Chairman.



First Session—Thirtieth Parliament

1974-75-76

Government
Publications



THE SENATE OF CANADA

STANDING SENATE COMMITTEE

ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

I N D E X

OF PROCEEDINGS

(Issues Nos. 1 to 42 inclusive)

Prepared

by the

Reference Branch,

LIBRARY OF PARLIAMENT.

THE SENATE OF CANADA

Standing Senate Committee on Legal and Constitutional Affairs
1st Session, 30th Parliament, 1974-1976

INDEX

Alberta, Province

Impaired Drivers' program 12:21, 25, 35-7
Statistics, 1970-74 12:46-7

Alberta Alcoholism and Drug Abuse Commission

Addiction Counselling and Rehabilitation Program 12:21,
25, 40-3, 48-53
Bill S-19, submission 12:27-53

Alcohol

Abuse 4:15; 5:9-10, 22-3; 13:9; 14:16-7; 15:14; 17:10; 18:14, 36
Breathalyzer tests, procedure 34:6-8, 12
Cannabis comparison 4:15; 5:22-3; 6:12, 18-9; 7:22, 26; 9:13;
13:8; 15:6, 11; 17:6-8, 12; 18:34, 48; 20:14-5
Impaired driving 14:7-8; 15:22; 34:5-13
Rehabilitation program 14:12
Revenues, 1972 15:6
Usage, increase 15:10

American Consumers Union

Licit and Illicit Drugs 7:6, 8

Anthony, Richard, Chairman, Alberta Alcoholism and Drug Abuse Commission

Bill S-19
Brief 12:18-22
Discussion 12:23-6
Submission 12:27-53

Antrobus, Mrs. Thora, Victoria Drug Concern Society

Bill S-19 9:8, 10, 12-6

Appeals

Absolute, conditional discharge 33:19
Acquittal verdict 33:15-8; 35:6-13
Summary convictions 33:20-1

Assault, Injury Offences

Begging while armed 31:10-1
"Breach of peace" 33:20
Punishment, maximum 31:11

Asselin, Hon. Martial, Senator (Stadacona)

Bill C-36 3:7-9
Bill C-71 34:5-7, 9-12
Bill C-83 37:14-5; 38:9, 11, 14, 17-8; 39:8-9, 11-2
Bill S-19 4:7-8, 13, 16, 18; 6:5, 10-2, 16; 7:14, 17-8, 22, 26,
29-31, 33, 35-6; 11:5, 13-4, 25, 27-8, 33, 37-8; 14:11-2, 15,
23-5, 30-2; 19:7, 9-11, 14, 16, 21, 25-7; 21:6-9

"Members of Parliament and Conflict of Interest" 25:7-9,
12, 14, 16, 18; 26:6, 8-9, 12, 17; 28:6-7, 9, 13-4

Atack, J., Director, Research and Planning, National Parole Service

Personnel 39:7

Attorney General of Canada

Criminal Code powers 30:6
Dangerous offenders, declaration applications 37:28

Audette-Filion, Mrs. Micheline, Director, Research Services, Quebec Bar Association

Bill S-19 11:21-2, 31-2, 34

Bail

Estreatal 33:20
Murder provisions 33:13-4

Bail Reform Act

Bill C-71, effects 30:9-10; 33:12-3
Cannabis possession 18:18, 67-8
Cash deposit in lieu of surety 30:9
Fingerprinting procedure 30:6
Prisoners' conditional release, onus 30:7-8

Bankruptcy Bill

Legislative procedure 36:5-6

Basford, Hon. R., Minister of Justice and Attorney General of Canada

Bill C-71
Discussion 35:6-14
Hansard, quote 31:11

Bell, Hon. Ann Elizabeth Haddon, Senator (Nanaimo-Malaspina)

Bill C-83 37:26

Bennett, J. S., Director, Scientific Councils, Canadian Medical Association

Bill S-19 5:16-8

Bill C-36, Representation Act, 1974

Discussion, Clause 7—Provision for Review of Act 3:7
Effective date 3:8
Electoral district, average size 3:8-9
Proposals 3:6-7
Purpose 3:6-7
Redistribution 3:8

Ontario, Quebec 3:7

Reported to Senate without amendment 3:5, 9

Bill C-43, An Act to amend the Law Reform Commission Act

Discussion, Clause 4—Superannuation, etc. 16:12

Purpose 16:6

Reported to Senate without amendment 16:5, 12

See also

Law Reform Commission

Bill C-47, An Act to amend the Judges Act and certain other Acts for related purposes and in respect of the reconstitution of the Supreme Courts of Newfoundland and Prince Edward Island

Discussion, Clause 12—Annuity to widow 23:7

Reported to Senate without amendment 23:5, 12

See also

Judges

Bill C-71, Criminal Law Amendment Act, 1975

Amendments

Clause 27—Theft, forgery, etc., of credit cards 34:4, 14-6

Clause 39—Accused absconding during trial 35:4, 13-4

Clause 59—Accused absconding during inquiry 35:4, 13-4

Discussion

Clause 2(1)—“Internationally protected person” 30:4-6

Clause 2(2)—Designation of Provincial Judges 30:4, 6

Clause 3—Internationally protected person 30:4-6

Clauses 4, 5—Procuratorial authority of Attorney General of Canada 30:4, 6

Clause 6—Making false statement under oath 30:4, 6

Clause 7—30:4, 6-7

Clause 8—No question of sexual conduct 30:11, 14,

Clause 9—Evidence of peace officer 30:4, 14-7; 31:4, 6-9; 33:4-11; 34:4, 17

Clause 10—“Slot machine” defined 30:4, 17

Clause 11—Placing bets on behalf of others 30:4, 17-9

Clause 12—Sale of Lottery Tickets from One Province to Another 30:4, 19

Clause 13—Murder in commission of offences 30:4, 19-20

Clauses 14-8—Drinking and driving offences (Breathalyzer) 34:4-5, 10, 12-4

Clause 19—Driving while disqualified 34:4, 13-4

Clause 20—Drinking and driving offences 34:4-5, 13-4

Clause 21—Begging while armed 31:4, 10-1

Clause 22—Assault causing bodily harm 31:4, 11

Clause 22.1—‘Minister of Health’, definition 31:4, 11

Clauses 23, 24—Telecommunications 31:4, 11-2

Clause 25—Punishment for theft 31:4, 12-3

Clause 26—Punishment for theft of cattle 31:4, 13-4

Clause 27—Theft, forgery, etc., of credit cards 31:4, 14-5; 34:4, 14-6

Clause 28—Protection of currency changing machines 31:4, 15

Clause 29—Possession of property obtained by crime 31:4, 15

Clauses 30, 31, 32—Theft, etc., under \$200 31:4, 12-3

Clauses 33, 34—Internationally protected persons 30:4-6

Clause 35—Order of prohibition 31:4, 15-6

Clause 36—Conspiracy to commit offences 31:4, 16

Clauses 37, 38—Mode of trial of attempted murder 31:4, 16

Clause 39—Accused absconding during trial 31:4, 16-8; 33:4, 11-2; 34:4, 17; 35:4, 13-4

Clauses 40, 41—Consent of Attorney General 32:4-5

Clause 42—Rules of court 32:4-6

Clause 43—Loss of jurisdiction 32:4, 7

Clause 44—30:11, 13-4; 31:4-6

Clause 45—Execution of appearance notice, promise to appear or recognize 30:4, 7; 31:4, 6

Clause 46—Conditional release 30:4, 7-9; 31:4, 6

Clause 47(2)—30:4, 9

Clause 47(3)—Order of detention 33:4, 12-4

Clause 47(6)—Detention in custody for offence 30:4, 9-10; 33:12, 14

Clause 48—Order directing matters not to be published for specified period 30:4, 10

Clause 49—30:4, 10

Clause 53—Interim release by judge only 33:4, 12-4

Clause 54—Order vacating previous order for release or detention 30:4, 10-1

Clause 55—30:4, 11

Clause 58—Medical examination of accused 32:4, 6

Clause 59—Accused absconding during inquiry 31:4, 16-8; 33:4, 11-2; 34:4, 17; 35:4, 13-4

Clause 59.1—Adjournment if accused misled 32:4, 6-7

Clause 60—Recognition of witness 32:4, 7

Clause 61—Trial without jury in Ontario 32:4, 7-9

Clause 62a)b)—31:4, 12-3

Clause 63—Preferring indictment in certain provinces 32:4, 9-10

Clause 64—Summons or warrant 32:4, 10

Clause 64.1—Interim release 32:4, 10, 12

Clause 65—Failure to appear at trial 32:4, 10-2

Clause 66—Reasons to be stated 30:4, 11, 13-4

Clause 67—32:4, 12

Clause 68—Medical examination of accused 32:4, 7

Clauses 69, 70, 71—Mentally ill accused 32:4, 12-3

Clause 72—Drinking and driving offences 34:4-5, 13

Clause 74—Medical examination of accused 32:4, 6

Clause 75—Morgentaler Case, provisions re: appeals 33:4, 15-9; 34:4, 16; 35:4, 6, 13

Clause 76—Absconding accused deemed present 31:4, 16-8; 33:4, 11-2; 34:4, 17

Clauses 77, 78 33:4, 19

Clause 79—Service of sentence in penitentiaries 33:4, 19

Clause 80—Absolute and conditional discharge 33:4, 19

Clause 81—Intermittent sentence on default of payment of fees 33:4, 19-20

Clause 82—Transfer of order 32:4-5

Clause 83—Civil disability 33:4, 20

Clause 84—Estreat of Bail 33:4, 20

Clause 85—Drinking and driving offences 34:4-5, 13

Clause 86—Loss of jurisdiction 32:4, 6

Clause 87—Medical examination of accused 32:4, 6

Clause 88—Breach of peace 33:4, 20

Clauses 89-95—Summary conviction appeals 33:4, 20-1

Clause 96—34:4, 13, 16

Clause 98-100—34:4, 16-7

Clause 101—34:4, 13-4

Clause 102—34:4-5, 13, 16

Bail Reform Act, relations 30:9-10

Letters, provincial justice ministers 33:5-7

Reported to Senate with amendments 35:4-5, 14

See also

Appeals

Morgentaler Cases

Public Disturbances

Bill C-83, Criminal Law Amendment Act (No. 1), 1976

Discussion

Clause 3—41:6

Clause 6—"Offence" 37:5-8

Clause 7(1)—(178.13)—Judge to be satisfied 37:9

Clause 10—Written notification to be given 41:6-7

Clause 11—(687)—Serious personal injury offence 37:21; 41:7

Clause 11—(688)—Application for finding 37:21, 23

Clause 12—Transitional 41:7

Clause 15—Definitions 38:5

Clause 16—Board established 38:5, 39:5

Clause 17—Regional panels 38:5; 39:10-1

Clause 18—38:5

Clause 19—Divisions of the Board 38:5; 39:12

Clause 20—Provincial boards 38:5; 39:10, 14

Clause 21—Jurisdiction of the Board 38:5

Clause 22—International agreements 38:5; 39:14

Clause 23—Regulations 38:5, 10-1; 39:8-9, 14-5, 18; 41:7

Clause 24—Termination of day parole 38:5

Clause 25—Personal interview 38:5-6, 10; 41:7

Clause 26—Effect of parole 38:6

Clause 27—Mandatory supervision 38:6; 39:10, 17

Clause 28—Suspension of parole and apprehension of paroled inmate 38:6

Clause 29—Apprehension 38:6

Clause 30—Place of recommittal 38:6

Clauses 31, 32, 33 38:6

Clause 39—Remission 40:7-8

Bill C-84, relation 37:29

Interim Report 41:6-7

Purpose 36:13-4

See also

Dangerous Offender

Gun Control

Invasion of Privacy

Wiretapping

Bill C-370, An Act to amend the Electoral Boundaries Readjustment Act

Commissions, role 8:6-8

"Rate of growth" 8:6-7

Reported to Senate without amendment 8:5,8

Bill C-1001, An Act to provide an exception from the general law relating to marriage in the case of Richard Fritz and Marianne Strass

Consanguinity degree 24:7, 11

Reported to Senate without amendment 24:5, 9

See also

Marriage Laws

Bill S-2, An Act to amend Supreme Court Act, make related amendments to Federal Court Act

Discussion

Clause 1—(8)—Residence 1:24-5

Clause 5—(41.1)—Appeals with leave of Supreme Court 1:8, 16

Clause 7—(52.)—Interest 1:23-4

Clause 10(2)—Application 1:19-21

Purpose 1:6, 9

Reported to Senate without amendment 1:5, 25

See also

Supreme Court of Canada

Bill S-3, An Act to provide continuing revision and consolidation of statutes, regulations of Canada

Consultation 1:27-8

Discussion

Clause 5—Revision of Statutes 1:26-7

Clause 6—Powers of Commission 1:26

Clause 7—Parliamentary examination 1:26-7

Clause 9(4)—Editions not evidence 1:27

Clause 19(3)—Scrutiny Committee of Parliament 1:27

Clause 24—Repeal 1:27

Purpose 1:25

Reported to Senate without amendment 1:5, 28

Bill S-19, An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code

Amendments

Clause 1—21:5-6

Clause 7—(48)—Possession of cannabis 21:5-8

Clause 7—(49)—Trafficking in cannabis 21:5, 7

Clause 7—(50(2))—Offence 21:5, 7

Clause 7—(56)—Additional regulations 21:5, 7

Clause 12—French version 21:5

Amendments proposed by Minister 4:7

Discussion

Clause 1—"Analyst" 11:35-6

Clause 2—Idem 11:36

Clause 3—11:36

Clause 5—(43)—Procedure in prosecution for possession for trafficking 11:36

Clause 7—(47)—Definitions 11:36; 14:37; 15:18

Clause 7—(48)—Possession of cannabis 4:7; 11:18, 29; 14:37; 15:17-20, 22; 17:26; 18:32, 51, 80; 19:27, 46-8

Clause 7—(49)—Trafficking in cannabis 11:18, 29; 14:37; 15:18-20, 22

Clause 7—(50)—Import or export of cannabis 4:11; 9:29; 15:19

Clause 7—(50(2))—Offence 6:7-9, 17; 11:8; 14:32, 37; 17:19-20; 18:6, 9, 40, 51

Clause 7—(51(1))—Cultivation of marihuana 6:15

Clause 7—(52)—Person deemed to be charged with indictable offence 4:8; 11:35; 14:37; 15:19; 17:19-20; 18:61

Clause 7—(53)—Procedure in prosecution for possession for trafficking 11:36; 15:20-1

Clause 7—(55(3))—Notice 11:36-7

Clause 12—11:22, 37

Clause 14—Coming into force 11:37

Clause 15—"Offence" 11:37

French text errors 11:22

Lalonde, Hon. Marc, Minister, statement 4:5-7

Purpose 4:5, 10, 16; 6:11; 7:12; 19:9

Reported to Senate with amendments 21:5

See also

Cannabis Legislation

Bill S-20, An Act to amend the Territorial Lands Act

Amendment

Clause 1—(24(1))—Government employees 10:9-10

Discussion

Clause 1—(24(1))—Government employees 2:5-6; 10:6, 8

Clause 1—(24(2))—Order of Governor in Council 10:7-9

Conflict of Interest Guidelines 2:5-7; 10:7-8; 28:14

Purpose 2:5; 10:6-7

Reported to Senate with amendment 10:5, 10

"Territorial Lands", definition 2:7

Bouchard, Claude, Vice-Chairman, National Parole Board

Bill C-83 38:6-11, 13-8; 39:5-12, 14-5, 18

British Columbia, Province

Cannabis, LSD possession statute 18:60

Drug Addiction Rehabilitation Act 9:14

Drug addicts, number 12:15-6; 14:19, 22; 18:11-3; 19:12-3

Parole system 38:14-5; 39:5

British Columbia Alcohol and Drug Commission

Operations 14:15

British Columbia Supreme Court

Wootton, Hon. Justice, quote, public disturbance 31:9

British North America Act

Marriage jurisdiction 24:6-7

Section 31 29:10

Section 91 26:18

Brodsky, G. Greg, Chairman, Criminal Justice Section, Canadian Bar Association

Bill S-19 18:15-25

Bryant, Dr. Thomas, President, Drug Abuse Council, Washington, D.C.

Cannabis research

Brief 13:5-10

Discussion 13:10-6

Euchanan, Hon. Judd, Minister of Indian Affairs and Northern Development

Bill S-20 10:6-9

Buckwold, Hon. Sydney L., Senator (Saskatoon)

Bill C-71 33:9, 11; 34:10-2, 16

Bill C-83 39:7, 9-10; 40:5-8, 10, 13-7

Bill S-2 1:7-8, 10, 14, 16, 24-6

Bill S-19 4:8, 14-7; 5:8; 11:8-10, 18-9, 22, 26-30; 12:9, 25-6

Bill S-20 10:8-9

"Members of Parliament and Conflict of Interest" 26:5-8, 11, 13-9; 27:9-15, 17-8; 29:7, 9-10

CMA

See

Canadian Medical Association

CMHC

See

Central Mortgage and Housing Corp.

Cameron, Hon. Donald, Senator (Banff)

"Members of Parliament and Conflict of Interest" 22:6, 9

Campeau Corp.

Director, appointed 28:6-7

Canada Evidence Act

Right of silence 37:18-9

Canadian Association of Chiefs of Police

Bail Reform Act 30:8

Bill S-19, brief 18:27-53

Wiretap notifications, recommendations 37:15-6

Canadian Automatic Merchandising Assoc.

Bill C-71, recommendation 31:15

Canadian Bar Association

Bill C-71, recommendation 31:12

Bill S-19, brief 18:55-83

Code of Professional Conduct 27:9

Letters, Hon. Otto Lang, Minister of Justice 1:11

Report on Supreme Court Caseload 1:13, 29-57

Arguments, oral 1:56-7

Background 1:6, 10-1, 35-6

Civil cases 1:11, 13, 41-2, 44-5, 48-9

Criminal appeals 1:43

Federal questions 1:12, 49-53, 81-2

Judges

Functions 1:12, 56

Number 1:12, 53-5

Public importance 1:13, 15-6, 21-2, 37, 40, 47-8

Reference cases 1:43-4

Sessions 1:12, 55-6

Canadian Committee on Corrections

Criminal justice principles 17:18

Dangerous offenders, recommendations 37:20-2

Canadian Criminology and Corrections Association

Board of Directors 14:14, 34-6

Organization's background 14:5

Canadian Medical Association

Bill S-19, statement 5:5-8

Cannabis recommendations 5:6; 7:7

Usage defined 5:13

Canadian Penitentiary Service

- Building program 40:9-10
- Institutions condemned 40:9
- Psychiatric centres 40:8-10, 12
- Temporary absences, escorted, authority 40:5
- See also*
- Penitentiaries

Canadian Society of Forensic Sciences

- Breathalyzer recommendation 34:5-6, 12-3

Canadian Wheat Board

- Conflict of interest 27:6

Cannabis

- Addiction 5:24; 20:13-4
- Alcohol comparison, relations 4:15; 5:22-3; 6:12, 18-9; 7:22, 26; 9:13; 13:8; 15:6, 11; 17:6-8, 12; 18:6, 34, 48; 20:14-5
- Amotivational syndrome 4:10, 13; 5:7; 9:29; 14:27; 17:9
- Antagonistic drug 5:24
- Background 5:5, 21; 20:11, 19-22
 - Hasan of Arabia, Charles Manson 20:23-5
- Cultivation 6:15
 - Domestic 4:15-6; 6:18; 12:11
 - Penalties 4:19, 29
- "Dangerous drug" 7:20-1; 11:7-8, 31, 39; 13:16; 14:8, 10-1, 27, 31; 15:25; 17:6; 18:7, 29-30, 38; 20:17
- Education programs 5:22; 7:13, 16; 9:13-4, 19, 24, 29; 11:25, 30-1; 12:17, 21-2, 45; 13:16; 14:13, 21-2; 15:15; 17:12, 22; 18:7-8, 50
 - Alberta 12:40-3, 48-53
 - Court Sponsored 12:43
 - New Brunswick 7:9-10
 - Rehabilitation 4:7; 12:20-1, 33-5, 38-43; 14:21; 18:10-1
- Effects 4:5, 17; 5:7; 7:6, 17; 9:18; 13:5-6; 15:6; 18:46-7; 20:17-9
 - Body accumulation, THC 9:27-8; 12:10, 12-3
 - Brain tissue 12:12-5; 14:6; 15:7-8
 - Psychological problems 13:12; 14:7; 17:22-3; 18:8
 - Reproductive system 4:13-4; 9:27; 12:12-3; 13:13
 - Sensations, varying 14:7
- Hashish
 - Comparison, potency 5:8, 12-3, 17; 12:9
 - Oil 4:12; 5:13
 - Profits 6:6
 - Utilization, manners of 4:12-3
 - Varieties 4:12
- Identity 12:9, 11
- Information, misleading 7:6-8
- Intoxication, measurement, identification 5:23-4; 9:19-20; 12:8, 10-1; 13:14; 17:12-3
- Lead to other drugs 4:8-9; 5:23-4; 6:6; 7:19, 27; 9:9; 12:8; 14:9, 19; 17:6-7, 14; 18:6, 10, 14-5, 35, 39
- LSD comparison 7:26-8; 12:17
- Narcotic classification 5:18-9; 11:8; 12:18; 20:13
- Possession-trafficking distinction 4:12; 5:15-6
- Potency, THC content 12:6-8, 10; 14:14-5; 15:13-4; 20:11-2
- Quantity defined, problem 11:35; 12:9-10; 13:12
- Research 4:5, 7, 9, 16; 5:7, 14; 7:8, 17-8; 9:16, 26; 11:31-2; 12:6, 8, 12; 13:9, 11-3
 - Berlin and Jacobson papers 12:16-7
 - Breacher, E., *Consumers Report*, Mar., 1975 11:31; 15:13

- Contradictory 13:5; 15:6-8; 17:14
- Criticism of techniques 14:6-7
- Driving impairment 5:17-8; 9:28-9; 15:8
- Reseeding 4:16
- Science*, attitude, Aug. 23, 1974 7:7-8
- Seizure Statistics 6:6-7
- Therapeutic uses 13:15-6
- Trafficking patterns 6:6, 9-10, 16; 15:25-6; 17:8; 18:40-1
 - Allmand, Hon. Warren, quote 7:21
 - Multiple drugs 15:20; 20:23
- Usage
 - Abuse, misuse 5:6, 13; 12:17-8; 17:12
 - Alberta 12:23-4
 - Availability, legal 14:17
 - CMA definition 5:13
 - Criminal activity, relations 18:15, 36
 - "Current" 13:13-4
 - "Heavy" 4:13, 17; 13:15
 - Increasing 4:14; 6:5-6, 13; 9:14, 22; 11:25, 27, 37; 12:14; 17:5-6; 18:48
 - India, Southeast Asia 4:16
 - Journey Into Madness*, André McNicoll 18:6-7, 41-5
 - Male-female ratio 4:13, 20-3
 - Reasons 11:26; 12:17; 15:10
 - Social background 14:22-3, 25; 17:13
 - Statistics 4:11-2, 20-30; 9:8
 - United States 7:10; 13:8-9
- Varieties 4:15; 9:30; 11:8; 12:5-6; 20:12

Cannabis Legislation

- Arrests, possession 6:10, 13-4; 9:13; 20:22
 - Oshawa, Ont., 1973-74 17:8
 - Texas 7:13-4
- Background 19:12
- Bail Reform Act, application 18:18, 67-8; 19:9
- Cases, backlog 11:15-6; 14:29, 31-2
- Convictions 4:14, 24, 30; 5:6-7; 6:6, 10; 18:14, 21
 - Court's jurisdiction 12:33
 - Pardons 4:7-8; 5:5-7, 20-1; 6:11; 7:30-1; 11:19-20; 17:11; 18:19-21, 74-5
 - Possession, number, 1973 4:6; 12:23; 13:15; 18:63
 - RCMP activity 4:15
- Criminal record 6:15; 9:10-1, 16-7, 23; 11:9-10, 13-4; 13:15; 14:8; 15:19; 17:15; 18:61-2, 68-9
 - Effect 13:9-10; 17:8-9, 16
 - Elimination proposed 5:5, 9, 11-2, 14-7, 19-20; 6:7-9, 11; 7:13, 15-6, 20-2, 24, 30-1; 11:23, 30, 33, 37-9; 14:5-6, 10, 17, 26-7; 15:15-7; 17:11, 14-6, 19-22; 18:18-9; 19:5-7; 21:7-8
- Decriminalization
 - Definition 18:16, 57-8
 - Effect 19:9-10
- Effects on usage 14:23, 27-8, 31
- Egypt 7:10-1
- Enforcement 6:6-7, 10-3, 16-9; 11:17; 18:6, 37-40
 - Costs 14:25; 15:5-6, 8-10; 19:18, 32-4
 - Criminal law 19:7-8, 19-24, 36-46
 - Differentiate, THC strength 6:8; 18:70
 - Regulatory law 19:18-9, 34-5
 - Youth, decreased support 14:6, 9
- Holland legalization 11:21
- Juvenile Delinquents Act, relation 17:17-8; 18:14; 20:16

Legalization 4:16-7; 5:7, 10-1; 6:15-6; 9:9, 23-4, 26; 11:20-1, 25; 12:16; 14:8, 11-4; 17:9-10, 18; 18:5, 55; 19:51
 Advocacy, motivation 7:11; 14:11-2
 Distribution, sale 5:12; 6:12; 14:5, 30-1; 15:11, 17, 37-8; 17:18
 National Organization for the Reform of Marihuana Laws (NORML) 7:8, 11-2, 14
 Possession 15:17, 24
 Trial period proposed 15:12-3
 U.S. relations 14:33
 New Zealand 5:17

Penalties

Age oriented 17:15, 24
 Comparisons 4:19; 11:22, 33-4; 19:16; 20:9
 Cultivation 4:19, 29; 6:9; 7:21; 11:6, 8-10, 18; 14:26; 18:34; 19:16, 50
 Deterrent effect 14:12, 14, 25; 15:8-9, 14, 25; 18:6, 47-8; 20:15
 Importation, exportation 4:28; 6:9; 7:21; 9:17, 30; 11:5-6, 8, 23-4; 14:26-8; 18:9-10, 22, 33-4, 77-8; 19:16
 Imprisonment 17:18-20; 18:58; 19:21-2, 24-7, 46-51; 20:16-7
 Lessening, effect 5:21; 7:10; 14:30; 15:10-1, 14; 18:6, 31
 Minimum 11:10; 15:19-20; 17:19-20; 18:7, 51; 21:7
 Non-payment alternatives 17:26
 Possession 4:6, 19, 25; 5:6, 8-9, 16; 6:7; 7:20-5; 9:8, 15-7, 30; 11:5, 16-8, 23, 27-9, 34-5, 38; 12:14, 43-4; 13:9; 14:16, 18, 25-6, 28-30; 15:18-9, 21-3; 18:13, 69; 19:13-4, 16-7; 20:10
 Border crossing 11:32-3
 Discharge provisions 18:64; 19:8-14, 21
 Possession for purpose of trafficking 4:27; 7:21; 11:6-7, 9, 11-2, 14-7; 12:43-4; 14:26; 18:33; 19:13-4, 50
 Second offence 18:10, 13
 Severity 4:6; 7:16-7, 22; 11:40; 12:26; 13:13; 14:32; 15:15, 17, 19; 17:7, 14, 23-4; 18:6, 36-7, 52
 Summary conviction—indictment 11:27-8, 37-8, 40; 12:31-2; 17:19-20, 25, 27; 18:31-2, 51-2, 58-9, 61; 19:7
 Trafficking 4:10-1, 19, 26; 6:17; 7:21; 11:6, 23; 12:23; 14:10-1, 19, 26, 28-9; 18:8-9, 32; 19:16, 19-20, 22, 52-4; 20:10-1
 Uniformity needed 17:24-7; 19:9
 Plea bargaining 7:23
 Probation
 Effects 17:22-3, 25; 18:63
 Possession 17:17
 Public attitude 14:9-12; 15:11-2; 17:5
 Reversed onus, burden of proof 4:8; 11:7, 12-3, 18-9, 22-3, 35-6; 14:32; 15:18, 23; 18:6, 24-5; 19:14-6
 Social consequences, probable 15:33-8; 19:23-4
 Trafficking, definition 11:6-7, 10-1, 29-30; 14:26; 15:18, 22-3; 18:21-4, 75-80; 19:14; 21:8
 Trial by jury, right 11:7
 Writ of assistance 15:20-1, 23-4

See also

Bill S-19

Committee of Inquiry into the Non-Medical Use of Drugs

Criminal Code

Food and Drugs Act

Narcotic Control Act

United States

Cannabis—Weed of Woe

Holt, Simma, M.P., brief 20:7-26

Capital Punishment

Trial period 15:13

Carey, P., Chief, Sentence Administration, Canadian Penitentiary Service

Parole procedure 40:8, 13, 17

Casgrain, Hon. Therese, on behalf of Judges Widows of Quebec

Bill C-47 23:7, 11-2

Central Mortgage and Housing Corp.

Conflict of interest transactions 26:12; 27:9

Trust company loans 29:9

Charette, André, Administrative Assistant to Commissioner of Penitentiaries

Parole system 39:11-2, 40:12, 16-7

Choquette, Hon. Lionel, Senator (Ottawa East)

Bill C-36 16:7, 9-12

Bill S-19 12:11, 18

Christie, D. H., Q.C., Associate Deputy Minister, Justice Dept.

Bill C-71 30:5-19; 31:5, 7-17; 32:5-12; 33:5-9, 11-21; 34:5-17; 35:7, 11

Bill C-83 36:6-17, 20

Civil Code

Marriage dispensations 24:7-8

Civil Disability

Penalty, maximum 33:20

Cliche Commission

See

Quebec, Province, Organized crime commission

Commissioner of Corrections

Parole Service, transfer 38:5, 9, 15-6; 40:5

Committee of Inquiry into the Non-Medical Use of Drugs

Alcohol abuse 5:10

Background 5:5-6

Cannabis

CMA recommendations 5:6

Criminal Law application costs, quote 5:20; 18:59-60, 73-4

Effects, physical, mental 4:5

Lead to other drugs 4:8; 6:6

Misleading impressions 7:7

Penalties 5:14

Recommendations 4:6; 5:6; 7:6

Cannabis penalties 4:19; 5:11; 11:34

New Zealand acceptance 5:17

Single Convention on Narcotic Drugs, 1961 18:56

Conflict of Interest

Beneficial interest 27:9, 12; 28:15-6
 Bribery offence 22:5-6
 Broadcasting licenses 42:8
 Cabinet leaks
 Home Bank case, 1924-25 28:15
 Walter Gordon 28:15
 CMHC transactions 26:12; 27:9
 Codification reasons 22:5, 7-8; 42:9
 Committee
 Court cases refused 29:12-3
 Investigate, advise 29:11; 42:8-9
 "Senior members", composition 29:12
 Commons-Senate rules, differences 22:8; 25:8-9, 14
 Directorships 27:11-4
 Statistical information requested 28:5-10
 Disclosure of interests 27:10-1, 14-7; 28:9, 12-4; 42:8
 Access to information 28:12
 Confidential information 28:14-5
 Income tax returns 28:11-2
 Effective date 22:6
 Frozen trusts 22:9-11, 16
 Government contracts
 Canadian Wheat Board, subsidy 27:6
 Definition 27:7
 Farm Credit Corp., loan 27:6
 Participation 27:5-7
 Direct-indirect interest 27:7-9; 42:7
 Director of company 27:9-14
 Period between Parliaments 27:17-8
 Permitted 42:7-8
 Travelling expenses 27:17
 Incompatible offices 26:15-9; 29:9; 42:6-7
 Library of Parliament, research papers 25:7-8
 Lobbying, fees accepted 26:5
 Members of Parliament
 Government contracts between elections 27:17
 Role 25:5-6
 Ministers' guidelines 22:6, 12-3
 Penalties 29:8-10
 Professional fees prohibited 25:15-8; 26:9-11, 13-4
 Public information 25:10-2
 Public servants 22:14-7
 Bill S-20 2:6-7; 10:7-8; 28:14
 Government policy 22:18
 Registrar's role 28:11-2
 Senators 25:9
 Fees prohibited 42:6
 Removal limitations 29:10
 Standards of conduct 25:9
 Statutory trustee proposed 22:8-9
 Trudeau, Right Hon. P. E., statements
 July 18, 1973 22:12-3
 Dec. 18, 1973 22:14-7
 U.K. rules 25:5; 26:10
 See also
 Members of Parliament and Conflict of Interest

Connolly, Hon. John J., Senator (Ottawa West)

Bill S-2 1:6-7, 9-10, 12, 17, 19, 21-5

Consumers Report

Cannabis research article, Mar., 1975 11:31; 15:13

Copeland, Paul D., Secretary, Law Union of Ontario

Bill S-19
 Brief 14:25-7
 Discussion 14:24-5, 27-33

Corporations Act

Directorship criteria 28:8

Council on Drug Abuse

Bill S-19, brief 7:19-22

Courts

Rules, creation 32:5-6
 See also
 Provincial Courts
 Supreme Court of Canada

Cowan, Keith, Consultant on Drug Abuse, Education Dept., Province of Prince Edward Island

Bill S-19
 Brief 7:5-11
 Discussion 7:11-9
Marihuana—What's New 7:7

Credit Cards

Offences 31:14-5; 34:14-6

Criminal Code

Burden of proof 4:8; 11:12-3
 Cannabis
 Costs of application, *Le Dain Report*, quote 5:20
 Possession record, elimination proposed 5:5, 9, 11-2, 14-7, 19-20
 Civil process, court's role 12:18-9, 28-31
 Rehabilitative programs, need 12:37-8
 Discharge provisions 18:17-8, 62-5; 19:6
 Indictment, direct 32:10
 Material witness 32:7
 Penalties, minimum 11:6
 Summary conviction 12:19; 19:10
 Warrants, execution of 37:20
 See also
 Bill C-71
 Bill C-83
 Individual offences

Criminal Law Amendment Act, 1975

See
 Bill C-71

Criminal Law Amendment Act (No. 1), 1976

See
 Bill C-83

Criminal Records Act

Pardons 7:28-35; 19:5-7; 33:20; 34:12

Application form 7:38-9

Section 8 19:7

Section 52 12:25

Croll, Hon. David A., Senator (Toronto-Spadina)

Bill C-43 16:6-11

Bill C-47 23:6-12

Bill C-71 30:9-18; 31:5, 8-11; 33:5-15, 17-9; 34:6, 9-12, 14-5

Bill C-83 36:5-17; 37:5-10, 13-4, 16-20; 38:6-9, 13-4

Bill S-19 5:9-11, 14, 19-24; 6:12-3, 15-8; 7:5, 12, 27-9, 31-2;

11:10, 15-6, 19-20; 12:5, 10-1, 15-6, 18; 13:12-4; 14:8-11, 13-4,

17-20, 25, 27, 29-31; 15:12, 15-6, 21-2, 24, 26-7, 29-31;

17:10-1, 21-2; 18:6-12, 17-9, 21; 19:6-7, 10-2, 17-8, 22; 21:6-9

"Members of Parliament and Conflict of Interest" 22:6-7,

9-11; 25:7-8, 10-4; 26:5-7, 9-15, 17; 27:5, 7-15, 17-8; 28:5-10,

12, 15; 29:5-7, 9-13

Crown Assets Disposal Corp.

Public servants purchasing 10:8

Dangerous Offender

Application for declaration 37:24-5

Attorney General, consent 37:28

Post-conviction 40:15-6

Goldenberg Report 37:20-1, 28

Law Reform Commission, report 37:21, 26-7

Murder, treason excluded 37:28-9

Provincial variation 38:9-10

Sentences

Hugessen Report, recommendations 37:22, 25-6

Indeterminate, preventive detention 37:22-4, 27-8

Reviews 37:25-7; 38:10, 12-3; 39:6

Sexual offender

Declaration 37:22-3, 29; 41:7

Released on parole, percentage 37:26

Sentences 37:21-2, 25

See also

Prisoners

Denis, Hon. Azellus, Senator (La Salle)

Bill C-1001 24:7-9

**Depratto, G., Director, Policy Planning and Evaluation,
National Parole Board**

Bill S-19 7:28-33

Deschatelets, Hon. Jean-Paul, Senator (Lauzon)

Bill C-36 3:6-7

**De Walt, Lloyd, Director, Association of Probation Offi-
cers, Winnipeg, Man.**

Bill S-19

Brief 17:17-20

Discussion 17:20-7

**Dionne, Jean-François, Crown Prosecutor, Justice Dept.,
Province of Quebec**

Bill S-19

Brief 11:35-7

Discussion 11:37-40

**Doucet, Gerard, Legal Adviser, Solicitor General's
Department**

Pardons 7:32-5

Drug Abuse Council, Washington, D.C.

Cannabis survey 13:8

Role 13:5

Drugs

See

Non-Medical Drugs

**Du Plessis, R. L., Acting Assistant Law Clerk and Parlia-
mentary Counsel**

Bill C-71 30:8-10, 17; 31:6-7, 9; 32:11; 33:11-2; 34:10, 16-7;
35:13-4

Bill C-83 39:11, 14-5, 17

Conflict of interest 25:13-8; 26:5-6, 8-9, 12-4, 17-8; 27:7-10,
13; 28:12-6, 29:6, 8-13

Du Plessis, R. L., Legal Adviser, Justice Dept.

Bill C-43 16:12

Bill S-3 1:25-7

Egypt

Cannabis legislation 7:10-1

**Electoral Boundaries Readjustment Act, An Act to
amend**

See

Bill C-370

Exchequer Court of Canada

See

Federal Court of Canada

Extradition Treaties

See

International Extradition Conventions

**Faggiolo, G., Project Officer, Research Branch, Library of
Parliament**

Bill C-1001 24:8

Farm Credit Corp.

Conflict of interest 27:6

Federal Court of Canada

Appeals 1:7

Fergusson, Hon. Muriel McQueen, Senator (Fredericton)

Bill S-19 4:17; 5:20, 22; 7:35; 9:5, 9-10, 15, 18, 24; 14:12-3;
15:31; 17:24

Financial Post

Directors survey 28:9

Firearms

See
Gun Control

Fingerprinting

Offences 30:6-7; 31:6
See also
Identification of Criminals Act

Fitzgerald, Professor P. J., Senior Research Officer, Law Reform Commission of Canada

Bill S-19
Brief 19:18-20
Discussion 19:23-4, 27

Flynn, Hon. Jacques, Senator (Rougemont)

Bill C-71 31:5-17; 32:6-12; 33:5-6, 8-12, 14-9, 21; 34:6-17; 35:6-9, 11-4
Bill C-83 36:5-14, 17-8; 37:8-12, 16-20, 23-9; 38:6, 8-13; 39:16; 40:8
Bill C-370 8:6-8
Bill C-1001 24:7-9
Bill S-2 1:8-11, 14-6, 19, 22-8
Bill S-19 5:11-2, 16, 19-25; 11:21, 28-33, 35, 39-40
Bill S-20 2:5-7; 10:7-10
"Members of Parliament and Conflict of Interest" 22:5, 8, 10-1; 27:6-18; 28:6-11, 13-6; 29:5-6

Food and Drugs Act

Jurisdiction
Cannabis 4:6; 5:5, 7, 15, 19-20; 7:20; 11:32, 39; 18:5, 16, 59-60; 20:10
LSD, amphetamines 4:6
Penalties, cannabis 4:19
Quebec Bar Association, amendment proposed 11:23
Reverse onus provisions 11:7
Strict liability 15:18-9
Trafficking, definition 18:76

Food and Drugs Act, the Narcotic Control Act and the Criminal Code, An Act to amend

See
Bill S-19

Foreign Investment Review Bill

Legislative procedure 36:6

Fournier, Bernard R., Acting Chief of Liaison, Advisory Committee for Northern Development, Indian Affairs and Northern Development Dept.

Bill S-20 10:7

Froomkin, S. M., Q.C., Director, Criminal Law Section, Justice Dept.

Bill C-83 36:5, 8-20; 37:11-29

Gambling

Interprovincial lotteries 30:19

Off-track bookmaking 30:17-9
Slot machines, exclusion 30:17

Geekie, D. A., Director, Communications, Canadian Medical Association

Bill S-19 5:10-1, 14-24

Globe and Mail

Campeau Corp. article, Nov. 25, 1975 28:6-7

Godfrey, Hon. John Morrow, Senator (Rosedale)

Bill C-36 3:7
Bill C-71 30:5, 7-18; 31:5-10, 12-4, 16-7; 32:8-9, 11-2
Bill C-83 36:5-8, 11, 13-5, 17, 20; 37:5-6, 8, 11-3, 15-6, 18-20, 23-4, 26-8; 38:6-8, 14-9; 39:8; 40:7, 10, 13, 15-6
Bill S-2 1:12-3, 16, 22, 24-5, 27
Bill S-19 4:17; 5:9, 17-20; 6:9-10, 14-5, 17; 7:22-3, 26, 28-9, 35-6; 9:5, 13, 21, 30-1; 11:7, 34, 40; 12:5, 9, 18, 25; 13:11; 14:15, 21, 24, 31; 15:12, 15-7, 20, 29-30; 18:9-10, 16, 20, 22-5; 19:24-5
Bill S-20 10:9-10
"Members of Parliament and Conflict of Interest" 25:6-8, 10-1; 26:5-10; 27:5, 7-8, 10-1, 13, 15, 18; 28:6-15; 29:5, 7-14

Goldenberg, Hon. H. Carl, Senator (Rigaud), Committee Chairman

Bill C-43 16:6-12
Bill C-47 23:6-8, 10-2
Bill C-71 30:5-12, 14, 16-20; 31:5-18; 32:5-13; 33:5-6, 9-12, 14-5, 18-21; 34:5-14, 16-7; 35:6, 9, 11, 13-4
Bill C-83 36:5-9, 13-4, 19-20; 38:5-10, 12, 14-6, 18-9; 39:5, 8-12, 14-5, 17-8, 20; 40:5-8, 14-7
Bill C-370 8:6, 8
Bill S-2 1:6, 16, 21, 23, 25-8
Bill S-19 4:5, 7-10, 15, 18; 5:5, 8-9, 11, 14, 17-8, 25; 6:5, 7-8, 10, 13-4, 16-9; 7:5, 11, 14-5, 17-9, 26, 33, 35-7; 9:5-6, 10, 15-8, 25, 30-1; 11:5, 7, 12, 21, 26-7, 33, 35, 40; 12:5, 8, 11, 15-8, 22, 26; 13:5, 10, 16; 14:5, 8, 11, 14-5, 19-20, 23-5, 27, 32-3; 15:5, 12-3, 15-7, 19-20, 22-5, 27-31; 17:5, 7, 9, 14, 16-7, 25, 27; 18:5, 10, 12-8, 21, 23-5; 19:5, 10-1, 14-5, 18, 20, 27; 21:6-9
Bill S-20 2:5, 7; 10:6, 9-10
"Members of Parliament and Conflict of Interest" 25:5-16, 18-9; 26:5-19; 27:5-7, 9-18; 28:5-16; 29:5-14

Goldenberg Report, March 1974

Dangerous offenders, recommendations 37:20-1, 28
Parole system 38:15-6

Great Britain

Conflict of interest rules 25:5; 26:10
Criminal Appeal Act (1907) 33:18
English Court of Appeal 1:17-9
House of Lords, Privy Council cases, number, 1961-71 1:74
Wootton Committee, 1968 5:5-6, 14

Green Paper

Meaning 22:5

See also

Members of Parliament and Conflict of Interest

Greene, Hon. John James, Senator (Niagara)

Bill C-47 23:6, 11-2

Bill S-2 1:9, 11, 13, 15-8, 21, 26-7

Bill S-19 17:26; 19:5, 7-10, 12, 18, 20, 22-3, 26; 21:7, 9

"Members of Parliament and Conflict of Interest" 22:9; 25:8, 10-6, 18; 27:6-8, 11, 17; 29:7-13

Gregory, Chief J. F., President, Canadian Association of Chiefs of Police, Inc., Victoria, B. C.

Bill S-19

Brief 18:5-7

Discussion 18:7-15

Gualtieri, R., Co-ordinator, Gun Control Project, Ministry of the Solicitor General

Bill C-83 36:9-14, 18-9

Gun Control

Age restrictions 36:14-5

Amnesty program 36:19

Civil liability 36:19

Dealers' record of transactions 36:15

Deaths resulting, 1974 36:8, 12, 19

Domestic disputes 36:11

Education program 36:19

Firearms, number 36:8, 12

Hand guns 36:12-3, 15-6

Legal use 36:13-4

Licensing 36:8-9; 41:6

Enrollment period 36:10-1

Foreign visitors 36:20

Implementation 36:11-2, 18

Investigation 36:10

Issuing officers 36:13

RCMP responsibility 36:10

Unfit persons 36:9-11

Officials, knowledgeable 36:7

Penalties, increase maximum 36:17

"Possession", "use", definitions 36:17-8

Prohibited weapons, definition 36:16-7

Prohibition orders 36:18-9

Restricted weapons, definition 36:15

"Saturday night special" 36:12

Seizure power 36:18

Shortcomings, present legislation 36:8

Storage of firearms 36:11-2; 41:6

See also

Bill C-83

Haig, Hon. J. Campbell, Senator (River Heights)

Bill C-71 30:5, 19

"Members of Parliament and Conflict of Interest" 26:8; 27:7, 17

Haley, Mrs. Carol, Victoria Drug Concern Society

Bill S-19

Brief 9:5-8

Discussion 9:8-17

Halprin, W., Vancouver Regional Office, Justice Dept.

Bill S-19 19:11-7

Hartt, Hon. Justice E. P., Chairman, Law Reform Commission of Canada

Bill C-43 16:6-12

Bill S-19

Brief 19:17

Discussion 19:20-7

Hashish

See

Cannabis

Hastings, Hon. Earl A., Senator (Palliser-Foothills)

Bill S-19 4:12, 16

Bill C-83 37:8-9, 14-5, 22-9; 38:6-13, 15-9; 39:5-20; 40:6-10, 12-4, 16-7

Heath, Hon. Ann Elizabeth Haddon, Senator (Nanaimo-Malaspina)

Bill S-19 6:14-6; 9:16-7; 18:23-4

Holland

Cannabis legislation 11:21

Hollies, J. H., Q. C., Departmental Counsel, Ministry of the Solicitor General

Bill C-83 36:7; 38:12-8; 39:5, 9-11, 13-8; 40:5, 6-9, 13-7

Hopkins, E. Russell, Law Clerk and Parliamentary Counsel

Bill S-3 1:26-7

Bill S-19 19:7-8, 10-1

Bill S-20 10:9-10

Horton, J. Patrick, Lane County District Attorney, Eugene, Oregon, U.S.A.

Cannabis legislation

Brief 15:24-6

Discussion 15:26-31

Hugessen Report

See

Task Force on the Release of Inmates (1973)

Identification of Criminals Act

Application 18:16-7

Fingerprints taken 30:7

Immigration Act

Parole provision 34:16-7

Income Tax Act

Document seizure practices 37:18

Independence of Parliament Act, Discussion Draft

Attorney General, role 29:6-8

Clause 2—Definitions

“Crown” 27:7

“Government contract” 27:7

“Participate” 27:6, 9

Clause 3—Members and Senators prohibited from participation in Government Contracts 27:9, 11; 42:7

Clause 10—Persons ineligible to be members 25:13; 26:15-8

Clause 11—Exception 26:18

Clause 12—Offence and punishment 29:6, 14

Clause 13—Profits, etc. of prohibited contracts and employments, etc. payable to Crown 25:13; 29:7

Clause 16—Application by member of the public 25:12-3; 29:7-8; 42:8-9

Imprisonment terms 25:14

Purpose 27:7

Senate, House of Commons rules 22:7; 25:5

Title 25:13-4

See also

Members of Parliament and Conflict of Interest

Inmates

See

Prisoners

International Extradition Conventions

Persons protected 30:5-6; 31:4

Interpol

Murder rates, comparison 36:19

Invasion of Privacy

Canada Evidence Act, right of silence 37:18-9

See also

Wiretapping

Issac, Julius, Toronto Regional Office, Justice Dept.

Bill S-19 19:10-1

Jayewardene, Dr. C. H. S., Chairman and Professor, Criminology Dept., University of Ottawa

Cannabis research 14:6-12, 14-5

Judges

Pensions, veterans' comparison 23:11

Provincial, designations 30:6; 32:8

Salary levels 23:11-2

County courts, stipend 23:12

Widows, number 23:7

Widows' Supplementary Retirement Benefit

Cost of Living indexation 23:9-10

Formula, determination 23:7-8, 10

Case examples, 1961, 1952 23:8-9

Inequality, 1950-76 23:6-7

Maximum-minimum range 23:8-9

Prime Minister, quote 23:7

See also

Supreme Court of Canada

Judges Act and certain other Acts for related purposes and in respect of the reconstitution of the Supreme Courts of Newfoundland and Prince Edward Island, An Act to amend

See

Bill C-47

Judges' Widows of Quebec

Bill C-47, statement 23:6-7

Prime Minister's letter 23:7

Representation 23:10-1

Kalant, Dr. Harold, Associate Director of Research, Biological Studies, Addiction Research Foundation, Toronto

Bill S-19

Brief 15:5-12

Discussion 15:12-7

Probable Consequences of Different Social Policies on Cannabis 15:33-8

Klonoff, Professor Harry, Department of Psychiatry, University of British Columbia

Bill S-19

Brief 9:17-9

Discussion 9:19-24

Lafond, Hon. Paul C., Senator (Gulf)

Bill C-36 3:8

Laird, Hon. Keith, Senator (Windsor)

Bill C-36 16:8, 12

Bill C-47 23:9-10, 12

Bill S-2 1:9, 12, 16, 27

Bill S-19 4:7, 9-10, 12, 15-6; 5:8-9, 12, 16, 18-9, 24; 6:7-9; 7:12-3, 24, 34; 9:25-6, 30; 11:7-8, 38; 13:10-1; 14:9-11, 21-2, 27-8; 17:11-2, 22; 18:6-8, 15, 17-9; 19:5-7, 9, 11, 14-5, 18, 21, 24-5; 21:8

Bill S-20 10:10

“Members of Parliament and Conflict of Interest” 25:5-6, 10, 12, 15-8; 26:5-18; 27:5-7, 9-12, 14-7; 28:5-6, 8, 10-3; 29:6, 8-9, 12-4

Laird, Hon. Keith, Senator (Windsor), Committee Deputy Chairman

Bill C-36 3:6, 9

Bill C-71 30:5-14, 16-9; 31:5, 7-8, 11, 13-4, 17-8; 32:6-11; 33:5, 7, 10-5, 17-8; 34:6-9, 11-2, 14-5, 17; 35:13-4

Bill C-83 36:5-9, 11-3, 16, 18, 20; 37:5, 7-20, 23, 25-9; 38:6-12, 14; 39:5-6, 9, 11-4, 16-7, 20; 40:7, 10-2, 17

Bill C-1001 24:6-9

“Members of Parliament and Conflict of Interest” 22:5-11

Lalonde, Hon. Marc, Minister of Health and Welfare

Bill S-19

Discussion 4:7-9

Statement 4:5-7

Lamer, Hon. Justice A., Vice-Chairman, Law Reform Commission

Bill C-43 16:7-10

Landry, L. P., Assistant Deputy Attorney General (Criminal Law), Justice Dept.

Bill C-83 37:5-20, 26

Landry, L. P., Director, Montreal Regional Office, Justice Dept.

Bill S-19 19:9-10, 13-4, 17

Lang, Hon. Daniel A., Senator (South York)

Bill C-71 30:5, 7-8, 10-2, 16-9; 31:8, 13, 17; 32:5-6, 9-10, 13; 34:6-11

Lang, Hon. Otto, Minister of Justice

Letters, Canadian Bar Association 1:11, 83-6

Langlois, Hon. Léopold, Senator (Grandville)

Bill C-47 23:6, 12

Bill C-71 30:6, 14, 16-7, 19; 31:8-9, 11-2, 15-7; 32:5, 10-2; 33:5, 7, 10-2, 16-9

Bill C-83 36:17; 37:7; 38:7; 39:8, 20

Bill S-19 4:8, 11, 13, 17-8; 6:7-8, 10; 7:26, 31-3, 35-6; 9:13-4, 23-5; 11:18, 30-3, 39-40; 13:14; 14:27; 15:14, 31

"Members of Parliament and Conflict of Interest" 25:9-10, 12, 14-5, 17-9; 26:12-3, 15-7; 28:5, 7-9, 11-5; 29:7-14

Laptuta, Miss Melanie, Researcher, Addiction Research Foundation of Ontario

Bill S-19

Brief 17:7-9

Discussion 17:9-10, 13-6

Law Reform Commission

Appeal, acquittal reverse, study proposed 35:11-3

Background 16:6

Bill S-19, brief 19:29-54

Common-Civil law systems study 16:8

Dangerous offender's sentences 37:21, 26-7

Family law 16:7-8, 10

Headquarters 16:11

(The) Meaning of Guilt 19:18, 33-5

Members, part, full-time 16:8-9, 11

Provincial liaison 16:10-1

Public involvement 16:8-10

Strict liability report 15:23

Working papers 19:18

Law Reform Commission Act, An Act to amend

See

Bill C-43

Law Union of Ontario

Bill S-19, brief 14:25-7, 37

Organization, role 14:24

Le Dain Cannabis Report, 1972

See

Committee of Inquiry into the Non-Medical Use of Drugs

Lederman, Professor W. R., Q.C., Research Officer, Canadian Bar Association

Bill S-2 1:11, 13-9, 22-3

Legal and Constitutional Affairs Standing Senate Committee

Holt, Mrs. Simma, M.P., appearance request 9:5

Procedure 7:35-7; 23:6; 25:6-7; 28:5-6; 29:5; 36:5-8, 20

Reports 1:5; 3:5; 8:5; 10:5; 16:5; 21:5; 23:5; 24:5; 35:5

See also

Goldenberg Report, March, 1974

Levy, Harold J., Barrister; Member, Ontario Bar Association

Bill S-19 11:13-4

Library of Parliament

Cannabis, paper 15:13

Conflict of interest, papers 25:7-8

Loan Sharking

See

Small Loans Act

Macauley, R. B., Legal Adviser, National Parole Board

Bill C-83

Discussion 38:8, 15; 39:15, 18-9; 40:17

Statement 38:5-6

McDonald, Hon. A. Hamilton, Senator (Moosomin)

Bill C-47 23:8

Bill S-19 7:26

McElman, Hon. Charles, Senator (Nashwaak Valley)

Bill S-19 6:18-9

McGeer, Dr. Patrick, Faculty of Medicine, University of British Columbia

Bill S-19

Brief 12:12-5

Discussion 12:15-8

McGrand, Hon. Fred A., Senator (Sunbury)

Bill C-83 36:19; 39:9

Bill S-19 4:13, 15; 5:17, 23; 7:11, 18; 9:8-9, 15-6, 21-2, 24; 13:13; 14:12; 17:9-10; 18:15

McGrath, W.T., Executive Director, Canadian Criminology and Corrections Association

Bill S-19 14:6-8, 10-5

McIlraith, Hon. George J., Senator (Ottawa Valley)

Bill C-36 3:8

Bill C-83 36:9, 11, 20; 37:14, 24-5, 27; 38:14, 16-8
 Bill C-1001 24:9
 Bill S-19 11:16-7; 12:22; 15:15, 19-21; 17:15-6, 20-1; 18:9, 24;
 19:11, 25-7; 21:6, 8
 Bill S-20 2:5-7
 "Members of Parliament and Conflict of Interest" 22:7-9;
 25:6, 8-9, 11-8; 26:6-8, 10-3, 15-8

**McKelvey, E. Neil, Q.C., Immediate Past President,
 Canadian Bar Association**

Bill S-2 1:10-25

McRuer Commission

See

Ontario. Royal Commission on Civil Rights

Malcolm, Dr. Andrew, Psychiatrist, Toronto

Bill S-19
 Brief 9:26-30
 Discussion 9:25-6, 30-1

Mandatory Supervision

Definition 38:7-8
 Forfeitures 1972-75 38:7-23
 Need 39:9
 Number involved 38:8-9; 39:7-8
 Remission period, release 39:10
 Repeal proposed 38:9; 39:17
 Return to prison, number 38:8
 Senate committee recommendation 38:14
 Sentence completion 39:7-8
 See also
 National Parole Board
 Paroles

Marijuana

See

Cannabis

Marijuana: A Signal of Misunderstanding

National Commission on Marijuana and Drug Abuse,
 U.S., report 13:6

Marriage Laws

Civil Code, dispensations 24:7-8
 Consanguinity degree 24:6-7
 Re: Miss Strass, Mr. Fritz 24:11
 Parliamentary jurisdiction, prohibited degrees 24:6-7
 See also
 Bill C-1001

(The) Meaning of Guilt

Law Reform Commission, paper 19:18, 33-5

Members of Parliament and Conflict of Interest

Committee proposed 22:6
 Contents 22:5
 Definitions
 Conflict of interest 22:6-7, 11; 25:6

Government boards, tribunals 26:6-7, 9, 13

Office, employment 26:16-8

Public servant 26:13

House of Commons' committee recommendations 27:10,
 14, 16, 18; 28:11; 29:12

Part I—Introduction to Problem of Conflict of Interest,
 quote 25:9

Part IV—Guidelines

1—Member of Parliament, trustee of public confidence
 25:10

2—Appearance of conflicts of interest 25:5-6, 10

3—Restrict candidacy 25:10

4—Provide public information, safeguard Member's
 privacy 25:10-2

5—Equal access, impartial treatment by official 25:12;
 26:5-6

6—Rules on conflict of interest of M.P.'s 25:6, 12

7—Public initiate investigation 25:12-3

8—Rules relevant to changing situations 25:13

Part IV—Proposals

1—Conflict of interest under single act 25:5, 13

2—Corrupt Practices and Prohibited Fees 25:14; 26:14

3—Standing Orders of House, Rules of Senate 25:6, 10,
 14-8; 26:5-15; 27:6, 8; 29:5-6; 42:6

4—Incompatible offices 25:10; 26:15-8

5—Incompatible offices 25:6; 26:17-8; 42:6

6—Exemptions 26:18

7—Members disqualified 26:18-9

8—Government contracts 27:5-6

9—Exception 27:6

10—Disclosure of interest 27:9-11; 28:10; 42:8

11—Exceptions 27:6-7, 14-7

12—Member in two successive Parliaments prohibited
 government contract between Parliaments 27:17

13—Government contract, voidable 27:17-8

14—Candidate register list of contracts, offices 27:18

15—Financial interests 28:11-3

16—Financial interest 28:14

17—Financial interests 28:14-6

18—Attorney General commence proceedings 25:12;
 29:6-8, 11

19—Penalties 29:8-10, 12-3

20—Members after serving penalties can seek re-elec-
 tion 29:11

21—Standing Committee oversee conduct 29:11, 13;
 42:8-9

22—Committee composed of senior members of House,
 Senate 29:11-2

23—Refusal to refer to Committee 29:12-3

24—Permission to participate in government contract
 27:15; 29:13

25—Implementation dates 29:13-4

Report to the Senate 42:6-9

Senate exclusion 22:7

See also

Conflict of Interest

Independence of Parliament Act, Discussion Draft

Ménard, Serge, Member, Quebec Bar Association

Bill S-19

Brief 11:22-5

Discussion 11:25-35

Misuse of Drugs Act, 1971

Cannabis penalties 5:6

Montreal Star

Jansen murder case, article 39:18

Montreal Trust

Government contracts 29:9

Morgentaler Cases

Acquittal verdict reversed 33:15-8; 35:6-9

Background 33:15

Bail conditions 30:10-1

Morrison, Dr. A. B., Assistant Deputy Minister, Health Protection Branch, National Health and Welfare Dept.

Bill S-19 4:9-18

Murder

Bail provisions 33:13-4

"Constructive" 30:19-20

Parolees

Convicted, number 38:6, 16-9, 24; 39:18

Provincial boards 39:14

Provisions 39:12, 15

Nadeau, Ron, Chairman, Planning Committee; Director, Association of Probation Officers, Fredericton, N.B.

Bill S-19 17:21-6

Narcotic Control Act

Background 18:11

Bail provisions 33:13

Cannabis

Background 15:11

Munro, Hon. John, 1972 policy, quote 7:21

Penalties 4:19

Removal 4:6; 5:10, 16, 19-20; 9:19-20, 23, 26, 29; 11:6-7, 13, 16, 19; 18:5, 16, 59-60; 20:10

Quebec Bar Association, amendments proposed 11:23

Reverse onus provisions 11:7

Trafficking, definition 18:75-6

National Health and Welfare Dept.

Lalonde, Hon. Marc, Minister, statement 4:5-7

National Parole Board

Establishment date 38:17

Jurisdiction 38:5

Membership 38:5, 9; 39:5-6

Duties 39:12

Parole Service

Personnel 39:7-8

Temporary absences, supervise 39:12

Transferred 38:5, 9, 15-6; 40:5

Provincial boards 38:5, 14-5; 39:5, 14

Regulations applicable 39:15-7

Psychiatrists employed 39:6

Regulation-making powers 38:5, 10-2; 39:8

Solicitor General's recommendations 39:10-1

See also

Mandatory Supervision

Paroles

Prisoners

Neiman, Hon. Joan, Senator (Peel)

Bill C-36 16:7, 12

Bill C-47 23:8-9

Bill C-71 30:7-9, 11-9; 31:5-6, 8-10, 13-5; 34:6-17; 35:11-2

Bill C-83 36:6-7, 10-2, 17-20; 37:5-8, 11-2, 14, 20, 23, 26-9; 38:7, 9-13; 39:8, 12-3, 15, 17-20; 40:6-7, 12-3, 17

Bill C-370 8:8

Bill C-1001 24:6

Bill S-19 4:11-2; 5:12, 23; 6:13-4, 16-7; 7:11-2, 15-6, 24-7, 34, 36-7; 9:8-9, 11, 15-7, 20, 22-3, 25-6; 11:12, 14-5, 20-1; 12:9-10, 16-7, 23-4; 13:10-1, 15-6; 14:11, 15-6, 18-20, 28-30, 33; 15:14, 23-4, 27-30; 17:13-5, 24-5, 27; 18:13-5, 17, 19-20, 24; 19:7-11, 13-4, 16, 23; 21:8-9

Bill S-20 2:6-7; 10:8

"Members of Parliament and Conflict of Interest" 25:7-9, 11, 13-8; 27:5-6, 16-7; 28:7-16

New Zealand

Cannabis legislation 5:17

Newfoundland, Province

Firearms, licensing 36:9

Non-Medical Drugs

Adaptive, non-adaptive, definitions 9:21

Addicts, criminal background 15:16

Adolescent maturation, effects 9:24

British Columbia, addicts 12:15-6; 14:19, 22; 18:11-3; 20:23

Cocaine 4:14-5; 5:13; 6:6

Coca-cola, contents 5:23

Convictions 1964-73 4:30

Distribution, control system 14:18

Heroin usage 4:14; 6:6-7; 7:19; 9:6-7, 9-10; 11:26-7; 12:18, 23; 14:19-21; 17:7, 14

British Columbia 18:5

Rehabilitation methods 14:16; 15:16

Supreme Court case 15:18

Withdrawal symptoms 17:10

LSD (Lysergic Acid Diethylamide) 4:14; 9:6, 9; 11:26; 17:14

Cannabis comparison 7:26-7; 12:17

MDA (Methamphetamine), speed 4:14; 6:6; 11:12

Methadone maintenance programs 15:16

Morphine 12:18

Multiple usage

Oshawa, Ont., prevalences 17:8, 13-4

Statistics 4:21-2; 6:14

Narcotics, definition 5:18-9

Opium 6:6-7, 14

Prisoners involved 9:6, 9; 14:20-1

Progression, soft-hard 9:21-3

"Recreational" purposes 13:12-3

Rehabilitation 9:7, 9, 11-3, 15; 14:16; 18:13-4

Probation process 9:11-2

Supply countries 6:14-5

See also

Alcohol
British Columbia, Province
Cannabis

Norrie, Hon. Margaret, Senator (Colchester-Cumberland)

Bill S-19 4:10

Nova Scotia, Province

Grand jury 32:9

Oberlander Report

Psychotic inmates 40:8-9

Ontario. Royal Commission on Civil Rights

Publicized 16:6

Ontario, Province

Crime commission 37:16
Parole system 38:14-5; 39:5

Ontario Addicton Research Foundation

Cannabis
Attitude 7:7, 27
Oshawa survey 17:6-9
Durham regional office 17:10

Ontario Bar Association

Bill S-19, brief 11:5-7

Ontario Supreme Court

Marriage law ruling 24:6
Trial without jury 32:7-8

Opium and Narcotic Drugs Act, 1938

Cannabis cultivation banned 5:5

Organized Crime Commissions

See
Quebec, Province

Ouimet Committee

See
Canadian Committee on Corrections

Panzica, Norman, Youth Consultant to Council on Drug Abuse, Ontario Probation Service

Bill S-19
Brief 7:19-22
Discussion 7:22-8
Curriculum vitae 7:19-20

Parker, Graham, Professor, Osgoode Hall Law School, York University, Toronto

Bill S-19
Brief 15:17-9
Discussion 15:19-24

Parole Act

Deportation 34:16-7
See also
Bill C-83

Paroles

Community, regional boards, decisions 39:11

Day

Number 38:9
Remission applicability 40:8
Termination powers 38:6, 15

Eligibility requirements 39:15

Exception, withdrawal 39:14; 41:7

Foreign countries, supervise 38:6; 39:14

Forfeitures, revocations

National Parole Board decisions 39:18-9

Number 1971-75 38:7, 22

Remission 39:9, 17-8; 40:7, 12-3

Granted, number 1969-75 38:6-7, 9, 15, 20

National Parole Board

Hearings, legal counsel 39:8-9; 41:7

Supervision 39:8, 10

Remissions

Day parole 40:8

Forfeitures, revocations 39:9, 17-8; 40:7, 12-3

Appeal, grievance procedure 40:6-7

Procurement criteria 40:6

Statutory-earned 40:5-6

Senate committee, recommendations 38:15-6

Statistics 38:14-5

Temporary absence

Authority proposed 40:5

Number 39:11-2

Parole Service, supervision 39:12

Provincial variations 39:16

Violator's sentence 38:6

See also

Mandatory Supervision

Murder, Parolees

National Parole Board

Peace and Security, Protection Against Violent Crime

Crime syndicates 37:17
Wiretap authorization, quote 37:14

Penitentiaries, Institutions

Classifications 40:11

Dorchester 40:9

Millhaven, psychiatric centre 40:8

New Westminster, condemned 40:9

St. Vincent de Paul 40:9

Saskatoon, psychiatric centre 40:8-10, 12

Warkworth 40:11

Penitentiary Service

See

Canadian Penitentiary Service

Poirier, Bernard E., Executive Director, Canadian Association of Chiefs of Police

Bill S-19 18:9

Prince Edward Island, Province

- Cannabis legislation
 - Blanchard, Elmer, Attorney-General, Feb. 1970 quote 7:6
 - Brief 7:5-11
 - Campbell, Hon. B., Education Minister, recommendations 7:11

Prisoners

- Classes of inmates 39:14-5
- Conditional release 30:7; 31:6
- Escape rate 39:13
- Federal-provincial institutions, transfers 33:19; 40:12-4
- Inmate population 1969-75 38:7, 13-4, 21
- Lieutenant Governor's warrant 32:12-3; 39:13-4
- Psychotic 40:8-9
 - Certified release 40:14-7
 - Indefinite incarceration 40:11
- Treatment facilities, condition 40:9, 11
 - See also*
- Dangerous Offenders
- Mandatory Supervision
- National Parole Board
- Paroles

Prisons and Reformatory Act

- Definite-indeterminate sentences, abolish 38:14

Provincial Courts

- Grand jury, abolition 32:9-10
- Rules of court, establish 32:5-6
 - See also*
- British Columbia Supreme Court
- Ontario Supreme Court

Provincial Parole Boards

- See*
- National Parole Board

Prowse, Hon. J. Harper, Senator (Edmonton)

- Bill C-36 3:7-9
- Bill C-43 16:12
- Bill S-19 4:7, 10-1; 5:9, 14-9, 21, 23; 6:11-4, 16-7, 19; 7:23-4, 33-7; 9:5, 11-2, 15-7, 19-21, 24-6, 30; 11:10-2, 18, 28-9, 35; 12:10, 15, 25; 13:10, 12, 14-5; 14:7-10, 13-5, 17, 19, 23; 15:5-6, 12-4, 16, 20-4, 29-31; 17:9-16, 25-7; 21:8
- Bill S-20 2:5-6; 10:6-7, 9-10

Public Disturbances

- Background 30:14-7; 31:6-9; 33:7-10
- Letters, provincial justice ministers 33:5-7
- Wooton, Hon. Justice, quote 31:9; 33:8
 - See also*
- Bill C-71

Quart, Hon. Josie D., Senator (Victoria)

- Bill S-19 5:14; 9:5, 14-5, 24-5; 12:26

Quebec, Province

- Firearms, licensing 36:9

- Inter-Departmental Committee on Drug Addiction 11:37
- Justice Dept., Bill S-19, brief 11:35-7
- Organized crime commission
 - Constitutionality 37:16-9
 - Contempt charges 37:18-20
 - Cotroni case 37:19
 - Di Irio, Fontaine case 37:16, 19
 - Police Act, jurisdiction 37:6
- Securities commission 37:17
- Vegas Project, organized crime 37:8

Quebec Bar Association

- Background 11:33
- Bill S-19
 - Brief 11:22-5
 - Recommendations 11:24-5, 32, 41
- Membership 11:21

RCMP

- See*
- Royal Canadian Mounted Police

Ralston, Mrs. Stuart B., on behalf of Judges' Widows of Quebec

- Bill C-47
 - Discussion 23:9-12
 - Statement 23:6-7

Rape Offences

- Offender's sentences 37:21-2; 38:11
- Trial procedures 30:11-4; 31:5-6

Reid, John, M.P., Parliamentary Secretary to President of Privy Council

- Bill C-36 3:6-9
- Bill C-370 8:6-8

Reports to the Senate

- Bill C-36, without amendment 3:5, 9
- Bill C-43, without amendment 16:5, 12
- Bill C-47, without amendment 23:5, 12
- Bill C-71, with amendments 35:4-5, 14
- Bill C-83, Interim 41:6-7
- Bill C-370, without amendment 8:5, 8
- Bill C-1001, without amendment 24:5, 9
- Bill S-2, without amendment 1:5, 25
- Bill S-3, without amendment 1:5, 28
- Bill S-19, with amendments 21:5, 8
- Bill S-20 with amendment 10:5, 10
- Members of Parliament and Conflict of Interest* 42:6-9

Representation Act, 1974

- See*
- Bill C-36

Riel, Hon. Maurice, Senator (Shawinigan)

- Bill S-2 1:10, 12, 18

Robert, Michel, Q.C., President, Quebec Bar Association

- Bill S-19 11:21-2, 24-7, 29-35

Robichaud, Hon. Louis J., Senator (L'Acadie-Acadia)

Bill C-36 16:7-10, 12
 Bill C-47 23:8
 Bill C-71 31:6, 10, 13, 15-7; 32:5, 8-12; 33:6, 10-2; 34:11-5, 17; 35:9, 13
 Bill C-83 36:8-10, 13-4, 16
 Bill S-2 1:11, 14-5, 26-7
 Bill S-19 4:13, 16; 11:17, 26, 33-4, 39; 17:12-3, 23-4; 21:6
 Bill S-20 2:7
 "Members of Parliament and Conflict of Interest" 22:6, 9-11; 25:7, 9-10, 14-6, 18; 27:6-7, 11-2, 14, 16; 29:12-3

Rosen, John, Barrister; Member, Ontario Bar Association

Bill S-19 11:9-12, 15, 21

Ross, J., Deputy Commissioner, Criminal Operations, Royal Canadian Mounted Police

Bill S-19 6:5, 8-19

Rowe, Hon. Frederick William, Senator (Lewisporte)

Bill S-19 4:10-1; 7:13-7

Royal Canadian Mounted Police

Bill S-19, presentation 6:5-7
 Gun licensing, responsibility 36:10
 Pardons, investigation 7:28-30
 Trafficking conviction activity 4:15

Ruby, Clayton, Barrister; Member, Ontario Bar Association

Bill S-19
 Brief 11:5-7
 Discussion 11:7-21

Ryan, J. W., Assistant Deputy Minister (Legislation), Justice Dept.

Bill S-3 1:27-8

Science

Cannabis article, Aug. 23, 1974 7:7-8

Scollin, J. A., Assistant Deputy Attorney General (Criminal Law), Justice Dept.

Bill S-19 19:5-11, 13, 15-6

Senate and House of Commons Act

Section 16—Contractor with the Government 27:6
 Section 22—Contracts under which public monies paid 27:6-7; 29:10
 Section 23(2)—Penalties 29:6

Senate Rules

Purpose 28:15
 Rule 49(1) 28:13-4
 Rule 75(1) 28:12, 14

Sharp, Hon. Mitchell, President of the Privy Council

Members of Parliament and Conflict of Interest

Brief 22:5-6
 Discussion 22:6-11

Single Convention on Narcotic Drugs, 1961

Cannabis 18:15
 Le Dain Commission review 18:56-7
 Possession offence 18:65-6

Small Loans Act

Convictions
 Montreal, 1972-76 37:8-9
 Summary 37:5-7

Smith, Hon. G. I., Senator (Colchester)

Bill C-71 30:5-8, 12, 15-6, 18; 31:6-9; 33:7, 9-10, 13, 18-9, 21; 34:7-10, 14; 35:9-11, 13
 Bill C-83 36:10, 12-3, 16-20; 37:11-2
 "Members of Parliament and Conflict of Interest" 25:5-6, 18; 26:5, 7, 9-10, 12, 14-9; 27:9; 29:7-8, 13-4

Smith, T. B., Director, Administrative and International Law Section, Justice Dept.

Bill S-2 1:6-11, 18, 21-5

Solicitor General of Canada

National Parole Board, recommendations 39:10-1

Solurch, Dr. Lionel P., Chairman, Committee on the Non-Medical Use of Drugs, Canadian Medical Association

Bill S-19 5:8-14, 17-24

Sommerfeld, S. F., Q.C., Director, Criminal Law Section, Justice Dept.

Bill C-71 30:6-11, 17; 31:6, 9, 11-2, 15-7; 32:6-7, 10, 13; 33:19-20; 34:5-16
 Bill S-19 19:8

Sparrow, Hon. Herbert O., Senator (The Battlefords)

Bill S-19 6:18

Stanbury, Hon. Richard J., Senator (York Centre)

Bill C-36 16:9

Statute Revision Act

See
 Bill S-3

Statute Revision Commission

Joint Committee on Regulations and other Statutory Instruments 1:26
 Members 1:26

Stein, J. Peter, Chairman, Alcohol and Drug Commission of British Columbia

Bill S-19 14:15-24

Stephenson, Dr. Bette, President, Canadian Medical Association

- Bill S-19
- Discussion 5:8-25
- Statement 5:5-8

Stevenson, Kyle, Member, National Parole Board

- Bill S-19 7:28-35

Sullivan, Hon. Joseph A., Senator (North York)

- Bill S-19 4:13-4, 16; 5:9, 13-5, 22; 13:11; 15:5, 13; 17:10, 12, 14, 23; 18:8, 13

Supplementary Retirement Benefits Act

- Judges' widows' pensions 23:8

Supreme Court Act

- Section 45—Quorum on application for leave 1:7, 9

Supreme Court Act, An Act to amend, make related amendments to Federal Court Act

- See*
- Bill S-2

Supreme Court of Canada

- Appeals 1:7-9, 12-5
 - Applications, number 1:9, 15, 68-9
 - Interest applied 1:23-4
 - Monetary limits 1:22-3, 37, 39-40
 - Procedure 1:45-6
 - Provincial courts 1:18, 34
 - Public importance 1:15-6, 21-2, 37, 40, 47-8
 - Refusals 1:16
 - Settlements, lower 1:19, 48-9
- Boisjoly case, 1971 30:6
- Canadian Bar Association, study, recommendation 1:6, 10-3, 30-1
- Judges
 - Number proposed, CBA 1:53-5
 - Residence 1:24-5
 - Role 1:34-56
- Lampard case, 1969 33:16
- Laskin, Rt. Hon. Justice Bora, quote, statutory onus 19:15
- Provincial crime inquiries
 - Constitutionality 37:16-9
 - Cotroni case 37:19
 - Di Iorio, Fontaine case 37:16, 19
- Retroactivity 1:20-2
- Sunbeam case, 1969 33:16
- Travelling panels 1:18
- U.S. Supreme Court, comparison 1:77-8
- Workload 1:6-7, 9-10, 34-41
 - Cases decided 1961-71 1:67
 - Motions heard, 1967-71 1:72
 - Remnants from previous sessions, 1963-72 1:70
 - Session duration 1:71
 - See also*
- Canadian Bar Association
- Judges
- Morgentaler Cases
- Provincial Courts

Tait, J. C., Legislation and House Planning Secretariat, Privy Council Office

- Conflict of interest 22:10-1

Task Force on the Release of Inmates (1973)

- Eligibility date 37:22, 25-6

Tax Review Board

- Identity 26:7-9, 13
- Refusal reasons 1:16

Territorial Lands

- Public Servant, conflict of interest 2:6-7

Territorial Lands Act, An Act to amend

- See*
- Bill S-20

Theft

- Cattle 31:13-4
- Offence, degree punishable 31:12
- Stolen goods, possession 31:15

Thorson, D. S., Deputy Minister of Justice and Deputy Attorney General

- Bill C-47 23:7-12

Tomalty, G., Officer in Charge, Drug Enforcement Branch, Royal Canadian Mounted Police

- Bill S-19
- Discussion 6:8-12, 14-8
- Statement 6:5-7

Trial By Jury

- Acquittal verdict, quote 35:7

Trudeau, Right Hon. P. E., Prime Minister

- Conflict of Interest statements
 - July 18, 1973 22:12-3
 - December 18, 1973 22:14-7
- Judges' widows' pensions 23:7

Turner, Dr. Carleton, Associate Director of Research, School of Pharmacy, University of Mississippi

- Cannabis research
 - Brief 12:5-8
 - Discussion 12:9-11
- Curriculum vitae 12:5

United Kingdom

- See*
- Great Britain

United States

- American Congress on Alcohol and Drug Abuse, 1974 11:34

Cannabis legislation

- Alaskan case, 1974 7:9
- Arrests, number, 1974 13:10
- California survey 13:7-8, 10; 15:10
- FBI records 15:26-8
- Massachusetts Supreme Court decision, 1967 7:9
- Michigan summary offence 7:10
- Minnesota 13:10
- Mississippi 12:10
- National Commission on Marijuana and Drug Abuse, 1972 5:5-6, 12-3; 7:7; 13:5-6
 - Marijuana: A Signal of Misunderstanding* 13:6
- National Council on Drug Abuse 7:8
- National Organization for the Reform of Marijuana Laws (NORML) 7:8, 11-2, 14; 13:14
- New York State 6:13
- Oregon 4:18; 5:10-2, 14; 7:8-9, 13; 9:30; 11:21, 35; 13:10, 14; 15:24-6, 28-31; 18:20
 - Citation Program, 1971 15:24-5, 28-30
 - Court caseloads reduced 15:26
 - Criminal records 15:27-9
 - Education program 15:31
 - Hashish exclusion 15:28-9
 - Increased usage 18:29-30
 - Possession, maximum fine, 1973 15:25, 29
 - Survey, Oct. 1974 13:6-7; 15:9, 31
 - Trafficking 15:27
- States' policies 5:12; 15:26
- Texas, imprisonments 7:13-4
- Supreme Court
 - Appeal background 1:16-7, 50-2
 - Cases, number 1:75
 - Operating procedures 1:77-9

van Roggen, Hon. George C., Senator (Vancouver-Point Grey)

Bill S-19 11:19

Veterans' Pensions

Contractual agreement 23:11

Victoria Drug Concern Society

Bill S-19, brief 9:5-8
Operations 9:10, 12, 14-5

Weagle, Wayne, Director, Durham Region, Addiction Research Foundation of Ontario

Bill S-19
Brief 17:5-7
Discussion 17:9-16

Westlake, W. C., Deputy Commissioner, Security, Canadian Penitentiary Service

Bill C-83 39:20; 40:5-12, 14, 16-7

Whitelaw, A. B., President, Canadian Criminology and Corrections Association

Bill S-19
Brief 14:5
Discussion 14:8-13

Wiretapping

- Admissible evidence 37:9-12
- Loan sharking operations 37:8-9
- Notification, elimination 37:12-4; 41:6-7
 - Canadian Association of Chiefs of Police, position 37:15-6
- Organized crime warrants 37:8
- Prison escapees communications 37:6
- Procedure 37:7
- Refusals by judges 37:14-5

Wise, Leonard, Barrister; Member, Ontario Bar Association

Bill S-19 11:8-10, 12, 14, 17, 20-1

Yates, A. B., Director, Northern Policy and Program Planning Branch, Indian and Northern Affairs Dept.

Bill S-20 2:5-7

Annexes**Issue No. 1**

- A—Report of Special Committee, Canadian Bar Association, on Caseload of Supreme Court of Canada 1:29-57
- B—Letter, Hon. Otto Lang, Minister of Justice 1:83-4
- C—Letter, Hon. Otto Lang, Minister of Justice 1:85-6

Appendices**Issue No. 1**

- A—Report of the Special Committee of the Canadian Bar Association on the caseload of the Supreme Court of Canada 1:29-82
- B—Letter, President of Canadian Bar Association to Hon. Otto Lang, Minister of Justice, June 19, 1973 1:83-4
- C—Letter, President of Canadian Bar Association to Hon. Otto Lang, Minister of Justice, Sept. 13, 1973 1:85-6

Issue No. 4

- C—Comparisons—Cannabis Legislation Proposals 4:19-30

Issue No. 7

- A—Application forms for pardons, Criminal Records Act 7:38-9

Issue No. 11

- A—Recommendations of Bar of Quebec on Bill S-19 11:41

Issue No. 12

- A—Alberta Alcoholism and Drug Abuse Commission, Bill S-19 submission, March 5, 1975 12:27-53

Issue No. 14

- A—Canadian Criminology and Corrections Association, Board of Directors 1974-75 14:34-6
- B—Law Union of Ontario, Bill S-19, proposed amendments 14:37

Issue No. 15

- A—Probable Consequences of Different Social Policies on Cannabis by Dr. H. Kalant 15:33-8

Issue No. 18

- A—Canadian Association of Chiefs of Police, Bill S-19 brief, April 22, 1975 18:27-53
- Summary 18:28

B—Canadian Bar Association, Bill S-19, Brief 18:55-83
Issue No. 19

A—Law Reform Commission of Canada, Bill S-19,
brief 19:29-54
Contents table 19:30

Issue No. 20

A—Cannabis-Weed of Woe by Simma Holt, M.P.,
March, 1975 20:7-26

Issue No. 22

A—Statement by Prime Minister on Conflict of Interest,
House of Commons, July 18, 1973 22:12-3

B—Statement by Prime Minister on Conflict of Interest,
House of Commons, Dec. 18, 1973 22:14-7

C—Guidelines to be observed by Public Servants concerning
Conflict of Interest situation 22:18

Issue No. 24

A—Marriage dispensation granted by Pope Paul VI
24:10

B—Montreal Children's Hospital, letter re: Miss
Strass, Mr. Fritz 24:11

Issue No. 38

A—Number of Paroles Granted, 1969-75 38:20

B—Canadian Inmate Population (Federal Penitentiaries),
1969-75 38:21

C—Number of Forfeitures and Revocations of Parole,
1971-75 38:22

D—Number of Forfeitures and Revocations of Mandatory
Supervision, 1972-75 38:23

E—Paroles Granted to Persons Convicted of Murder
1959-75 38:24

Documents

- Bill C-71, Provincial Justice Ministers' letter 33:5-7
- Comments on Bill C-83 raised at Senate Committee
proceedings 40:17
- Convention on Internationally Protected Persons 31:4

Witnesses

- Anthony, Richard, Chairman, Alberta Alcoholism and
Drug Abuse Commission
- Antrobus, Mrs. Thora, Victoria Drug Concern Society
- Atack, J., Director, Research and Planning, National
Parole Service
- Audette-Filion, Mrs. Micheline, Director, Research
Services, Quebec Bar Association
- Bastford, Hon. R., Minister of Justice and Attorney
General of Canada
- Bennett, J. S., Director, Scientific Councils, Canadian
Medical Association
- Bouchard, Claude, Vice-Chairman, National Parole
Board
- Brodsky, G. Greg, Chairman, Criminal Justice Section,
Canadian Bar Association
- Bryant, Dr. Thomas, President, Drug Abuse Council,
Washington, D.C.
- Buchanan, Hon. Judd, Minister of Indian Affairs and
Northern Development
- Carey, P., Chief, Sentence Administration, Canadian
Penitentiary Service
- Casgrain, Hon. Therese, on behalf of Judges' Widows
of Quebec

- Charette, Andre, Administrative Assistant to Commissioner
of Penitentiaries
- Christie, D. H., Q.C., Associate Deputy Minister, Justice
Dept.
- Copeland, Paul D., Secretary, Law Union of Ontario
- Cowan, Keith, Consultant on Drug Abuse, Education
Dept., Province of Prince Edward Island
- De Walt, Lloyd, Director, Association of Probation
Officers, Winnipeg, Man.
- Depratto, G., Director, Policy Planning and Evaluation,
National Parole Board
- Dionne, Jean-François, Crown Prosecutor, Justice
Dept., Province of Quebec
- Doucet, Gerard, Legal Adviser, Solicitor General's
Department
- DuPlessis, R. L., Acting Assistant Law Clerk and
Parliamentary Counsel
- DuPlessis, R. L., Legal Adviser, Justice Dept.
- Faggiolo, G., Project Officer, Research Branch, Library
of Parliament
- Fitzgerald, Professor P. J., Senior Research Officer,
Law Reform Commission of Canada
- Fournier, Bernard R., Acting Chief of Liaison, Advisory
Committee for Northern Development, Indian
Affairs and Northern Development Dept.
- Froomkin, S. M., Q.C., Director, Criminal Law Section,
Justice Dept.
- Geekie, D. A., Director, Communications, Canadian
Medical Association
- Gregory, Chief J. F., President, Canadian Association
of Chiefs of Police, Inc., Victoria, B.C.
- Gualtieri, R., Co-ordinator, Gun Control Project, Ministry
of the Solicitor General
- Haley, Mrs. Carol, Victoria Drug Concern Society
- Halprin, W., Vancouver Regional Office, Justice Dept.
- Hartt, Hon. Justice E. P., Chairman, Law Reform
Commission of Canada
- Hollies, J. H., Q.C., Departmental Counsel, Ministry of
the Solicitor General
- Horton, J. Patrick, Lane County District Attorney,
Eugene, Oregon, U.S.A.
- Issac, Julius, Toronto Regional Office, Justice Dept.
- Jayewardene, Dr. C. H. S., Chairman and Professor,
Criminology Dept., University of Ottawa
- Kaland, Dr. Harold, Associate Director of Research,
Biological Studies, Addiction Research Foundation,
Toronto
- Klonoff, Professor Harry, Department of Psychiatry,
University of British Columbia
- Lalonde, Hon. Marc, Minister of Health and Welfare
- Lamer, Hon. Justice A., Vice-Chairman, Law Reform
Commission
- Landry, L. P., Assistant Deputy Attorney General
(Criminal Law), Justice Dept.
- Landry, L. P., Director, Montreal Regional Office,
Justice Dept.
- Laptuta, Miss Melanie, Researcher, Addiction
Research Foundation of Ontario
- Lederman, Professor W. R., Q.C., Research Officer,
Canadian Bar Association
- Levy, Harold J., Barrister; Member, Ontario Bar
Association
- Macauley, R. B., Legal Adviser, National Parole Board

- McGeer, Dr. Patrick, Faculty of Medicine, University of British Columbia
- McGrath, W. T., Executive Director, Canadian Criminology and Corrections Association
- McKelvey, E. Neil, Q.C., Immediate Past President, Canadian Bar Association
- Malcolm, Dr. Andrew, Psychiatrist, Toronto
- Ménard, Serge, Member, Quebec Bar Association
- Morrison, Dr. A. B., Assistant Deputy Minister, Health Protection Branch, National Health and Welfare Dept.
- Nadeau, Ron, Chairman, Planning Committee; Director, Association of Probation Officers, Fredericton, N.B.
- Panzica, Norman, Youth Consultant to Council on Drug Abuse, Ontario Probation Service
- Parker, Graham, Professor, Osgoode Hall Law School, York University, Toronto
- Poirier, Bernard E., Executive Director, Canadian Association of Chiefs of Police
- Ralston, Mrs. Stuart T., on behalf of Judges' Widows of Quebec
- Reid, John, M.P., Parliamentary Secretary to President of Privy Council
- Robert, Michel, Q.C., President, Quebec Bar Association
- Rosen, John, Barrister; Member, Ontario Bar Association
- Ross, J., Deputy Commissioner, Criminal Operations, Royal Canadian Mounted Police
- Ruby, Clayton, Barrister; Member, Ontario Bar Association
- Ryan, J. W., Assistant Deputy Minister (Legislation), Justice Dept.
- Scollin, J. A., Assistant Deputy Attorney General (Criminal Law), Justice Dept.
- Sharp, Hon. Mitchell, President of the Privy Council
- Smith, T. B., Director, Administrative and International Law Section, Justice Dept.
- Solurch, Dr. Lionel P., Chairman, Committee on the Non-Medical Use of Drugs, Canadian Medical Association
- Sommerfeld, S. F., Q. C., Director, Criminal Law Section, Justice Dept.
- Stein, J. Peter, Chairman, Alcohol and Drug Commission of British Columbia
- Stephenson, Dr. Bette, President, Canadian Medical Association
- Stevenson, Kyle, Member, National Parole Board
- Tait, J. C., Legislation and House Planning Secretariat, Privy Council Office
- Thorson, D. S., Deputy Minister of Justice and Deputy Attorney General
- Tomalty, G., Officer in Charge, Drug Enforcement Branch, Royal Canadian Mounted Police
- Turner, Dr. Carleton, Associate Director of Research, School of Pharmacy, University of Mississippi
- Weagle, Wayne, Director, Durham Region, Addiction Research Foundation of Ontario
- Westlake, W. C., Deputy Commissioner, Security, Canadian Penitentiary Service
- Whitelaw, A. B., President, Canadian Criminology and Corrections Association
- Wise, Leonard, Barrister; Member, Ontario Bar Association
- Yates, A. B., Director, Northern Policy and Program Planning Branch, Indian and Northern Affairs Dept.

For pagination, see Index in alphabetical order.

